



Committee on Education and the Workforce
Early Childhood, Elementary, and Secondary Education Subcommittee hearing entitled
“Education Without Limits: Exploring the Benefits of School Choice,” Tuesday, March 11, 2025

Questions for the Record
Robert C. “Bobby” Scott (D-VA)
Question(s) for Witness Jessica Levin

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Thank you for the opportunity to testify at the hearing on March 11, 2025, and to respond to these additional questions from Congressman Scott.¹

- 1. Can you elaborate on the difference between public charter schools run by non-profit management organizations and public charter schools run by for-profit management organizations, and why there are concerns about for-profit management organizations? What has the evidence shown about public charter schools run by for-profit management organizations?**

As noted in my original testimony, there are numerous public school options available to families in addition to a student’s neighborhood school, including charter schools. As I previously emphasized, it is crucial that all such programs are carefully designed and implemented to promote equal access, high-quality educational opportunities, and effective use of public funds. For charter schools, one part of fulfilling those goals is making sure these schools are run by non-profit rather than for-profit management organizations.

¹ As Education Law Center’s primary mission is to advocate for the rights of students, my answers focus on relevant research and laws as they pertain to students, and do not address the rights of school employees.

Two of the central concerns with charter schools run for profit are: 1) their near-total lack of transparency on for-profit spending of taxpayer funds, including regarding costs and profit margins; and 2) the implications of for-profit status for student achievement. (Notably, the vast majority of charter schools run by for-profit providers, about 80%, are concentrated in four states: Arizona, Florida, Michigan, and Ohio.²)

Although it is possible to think of “for-profit” on a sliding scale—authorizers contracting with for-profit vendors for some but not all of their services—the data we have indicates that many charter schools contract out services to for-profit vendors via “sweeps contracts,” which “give for-profits the authority to run all school services in exchange for all or nearly all of the school’s revenue.”³ The problem is that neither general taxpayers nor parents have much idea of how that money is spent. Only Ohio publicly posts charter schools’ management contracts, enabling meaningful comparisons between spending by for-profit and non-profit management companies.⁴ There is no principled reason that public oversight requirements should not be attached to the public dollars spent on these charter schools.

This general lack of transparency, in turn, creates a problem when it comes to studying the impacts of for-profit practices on student outcomes—but the data we have suggests negative effects.⁵ For example, while some research has shown that non-profit charter schools can be part

² Carol Burris & Darci Cimarusti, *Chartered for Profit: The Hidden World of Charter Schools Operated for Financial Gain* 37, Network for Public Education (2001).

³ *Id.* at 5.

⁴ *Id.* at 12.

⁵ See, e.g., James L. Woodworth, et al., *Charter Management Organizations* 35, Center for Research on Education Outcomes (2017) (concluding that for-profit charter schools “have a significant negative effect size in math”); Know Your Charter, *For Profit Charter Schools: More Money Outside the Classroom, Less Education for Kids* (2019) (noting that for-profit charter school operators in Ohio do not produce better academic results but “have been at the forefront of Ohio’s array of charter school scandals”).

of an effective suite of reforms, the data are much less encouraging for their for-profit counterparts. Using data from Ohio, researchers affiliated with the pro-charter Fordham Institute⁶ found that for-profit providers in that state underperformed their non-profit counterparts as a direct result of their for-profit status.⁷ On the one hand, for-profit charter schools located near under-resourced school districts appeared to have comparable or even slightly higher test scores than those nearby under-resourced districts.⁸ On the other hand, lower student outcomes in terms of both achievement and attendance appeared in for-profit charters relative to non-profit charters in the same district with similar spending levels, leading the researchers to conclude that it was precisely the for-profit status—not the act of contracting out services, per se—that led to those results.⁹ Expenditures on staff were lower in for-profit charter schools and class sizes were larger, leading the researchers to conclude that chasing a profit margin with a fixed pool of incoming public revenue may have caused the decline in student outcomes relative to similar schools organized as non-profit providers.¹⁰ Moreover, charter schools run for profit serve proportionately fewer disadvantaged students, such as those eligible for special education or free or reduced-price lunch—who are generally more costly to educate.¹¹

Thus, the for-profit status of some charter schools leads to far less transparency for taxpayers and parents on how public resources are spent, and what little data is available suggests that for-profit providers may cut student services in pursuit of higher profit margins.

⁶ Stéphane Lavertu & Long Tran, *For-Profit Charter Schools: An evaluation of their spending and outcomes*, Thomas B. Fordham Institute (2022).

⁷ Stéphane Lavertu & Long Tran, *For-profit milk in nonprofit cartons? The case of nonprofit charter schools subcontracting with for-profit education management organizations*, Annenberg, ED Working Paper No. 23-785 (June 2023).

⁸ *Id.* at 5-6.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ Burris & Cimarusti, *supra* note 2, at 5.

2. Private schools are often not required to follow civil rights laws. Will accepting federal funding through a voucher scheme change that?

The answer to this question may depend on how a federal voucher law was written and structured. If a tax credit used to fund a federal voucher program were deemed federal financial assistance for the purposes of federal civil rights laws, those laws may apply to prohibit discrimination in the voucher program based on characteristics including race, sex, and disability. Nonetheless, even if a federal tax credit voucher program were deemed federal financial assistance such that some antidiscrimination and disability rights laws applied, students' civil rights would still be endangered by vouchers in numerous ways, as explained below.

Pursuant to the U.S. Constitution's Spending Clause, the federal government can attach conditions to the aid it provides.¹² An important illustration of this is federal antidiscrimination laws, under which funding recipients agree to prohibit discrimination on the basis of certain protected characteristics in exchange for federal financial assistance. For example, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination by recipients of federal financial assistance on the basis of race, sex,¹³ and disability, respectively.

The most prominent proposal for a federal voucher program is the Educational Choice for Children Act, which would provide tax credits for contributions to organizations that distribute vouchers. Thus, a threshold question in determining whether federal civil rights laws would apply to such a program is whether a federal tax credit constitutes federal financial assistance

¹² See *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981); Shariful Khan, *An Expansive View of "Federal Financial Assistance,"* 133 Yale L.J. 691, 691–92 (2024).

¹³ In *Bostock v. Clayton County*, 590 U.S. 644, 649–52 (2020), the Supreme Court interpreted the prohibition on sex discrimination in Title VII to prohibit discrimination based on sexual orientation and gender identity.

under relevant civil rights statutes. State courts have taken varied approaches to whether state tax credit voucher schemes constitute state funding of private education under state constitutions and laws.¹⁴ In a similar vein, federal courts have reached different conclusions about whether federal tax benefits constitute federal financial assistance.¹⁵ If a federal tax credit is deemed federal financial assistance, federal civil rights laws such as those listed above may apply to a voucher program funded in that way.¹⁶

However, *even if* a federal tax credit voucher program were deemed federal financial assistance such that relevant civil rights laws would attach, thus prohibiting some forms of discrimination by private schools receiving the voucher funds, students' rights would still be at serious risk in several ways. First, private schools may employ policies that “appear racially neutral but still have the effect of targeting specific groups of students.”¹⁷ For example, a school dress code or hairstyle policy may have the effect of excluding certain groups of students or making them feel unwelcome.¹⁸ Using a student's disciplinary history as part of admissions

¹⁴ Compare *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017), with *Commonwealth of Kentucky ex rel. Cameron v. Johnson*, 658 S.W.3d 25, 29 (Ky. 2022).

¹⁵ Compare, e.g., *Paralyzed Veterans of Am. v. Civil Aeronautics Bd.*, 752 F.2d 694, 708–09 (D.C. Cir. 1985) with *McGlotten v. Connally*, 338 F. Supp. 448, 462 (D.D.C. 1972) (provision of a tax deduction for charitable contributions is a grant of federal financial assistance within the scope of the 1964 Civil Rights Act). Also note that many cases have considered federal tax benefits in the form of tax *exemptions*, rather than the tax *credits* that would be used to fund a federal voucher program.

¹⁶ If such laws do apply, they may conflict with provisions of federal voucher legislation that purport to prohibit governmental control of private school policies (as well as the policies of voucher-granting organizations), which are often discriminatory. See, e.g., S.292, Educational Choice for Children Act of 2025, §§ 5(a)(1)-(2).

¹⁷ Bayliss Fiddiman & Jessica Yin, [*The Danger Private School Voucher Programs Pose to Civil Rights*](#) 4, Center for American Progress (May 13, 2019).

¹⁸ *Id.*

criteria could also negatively impact students of color, who are disproportionately likely to have experienced discriminatory school discipline.¹⁹

Second, there is a very significant statutory exemption from Title IX for those private schools that are religious. Religious schools are exempt from Title IX requirements if compliance “would not be consistent with the religious tenets of such organization.” 20 U.S.C. § 1681(a)(3). Religious schools claiming this exemption could thereby discriminate against students on the basis of sex, gender identity, or sexual orientation.²⁰ Because the majority of private schools across the country are religious,²¹ this constitutes a major carveout from Title IX’s protections, even if a school is receiving federal funds.

Third, although Section 504 might apply to private schools participating in a federal voucher program, other critical protections for students with disabilities—namely the Individuals with Disabilities Education Act (“IDEA”) and the Americans with Disabilities Act (“ADA”)—would still likely not apply or apply only in limited ways. Under the IDEA, voucher students are considered “parentally placed private school children” and thus forego most of the rights that would be guaranteed to them in public schools.²² These students lose the right to an individualized education that meets their specific needs, as well as protection against unfair discipline and segregation from their non-disabled peers, *see* 20 U.S.C. §§ 1412(a)(10), 1415(k)(1)(E)–(F); 29

¹⁹ *See, e.g.,* Melanie Leung-Gagné, et al., [*Pushed Out: Trends and Disparities in Out-of-School Suspension*](#), Learning Policy Institute (Sept. 30, 2022).

²⁰ *See* Fiddiman & Yin, *supra* note 17, at 6-7.

²¹ *See* Stephen P. Broughman, et al., [*Characteristics of Private Schools in the United States: Results from the 2015–16 Private School Universe Survey 2*](#), U.S. Department of Education, Institute of Education Sciences (Aug. 2017).

²² *See* Fiddiman & Yin, *supra* note 17, at 5.

U.S.C. § 794(b)(1),²³ and parents typically give up their IDEA rights to be notified, provide input, and seek judicial remedies regarding changes to their children’s education and services.²⁴ Additionally, ADA protections are limited for private school students. Title II of the ADA does not apply to private schools. 42 U.S.C. § 12132. Disability accommodations under Title III of the ADA are required in private schools only if they would not change the fundamental nature of the program or result in difficulty or expense constituting an “undue burden,” 42 U.S.C. §§ 12182(b)(2)(A)(ii)-(iii), *and* religious private schools are exempt, *id.* § 12187.

Finally, it may be instructive to look to the Washington, D.C. Opportunity Scholarship voucher program, created by the Scholarships for Opportunity and Results Act (“SOAR Act”), D.C. Code Ann. § 38-1853.01 *et seq.*, which is currently the only federally created and funded voucher program. The SOAR Act includes language prohibiting discrimination against voucher program participants or applicants on the basis of race, color, national origin, religion, or sex. D.C. Code Ann. § 38-1853.08. However, there have long been serious concerns about enforcement of this antidiscrimination provision, on both legal and practical levels.²⁵ Additionally, the SOAR Act leaves private schools able to discriminate in areas like admissions and discipline on other bases, such as disability.²⁶ *Id.*; *see also id.* § 38-1853.08(c) (stating that

²³ *See also* U.S. Government Accountability Office, [*Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*](#) 8-9, Tbl.2 (Nov. 2017); Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 Emory L.J. 1037, 1059 (2019).

²⁴ *See* Raj, *supra* note 23, at 1058–59; U.S. Department of Education, [*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*](#) 30 (Apr. 2011).

²⁵ Moreover, the predecessor to the SOAR Act had language purposefully exempting D.C. voucher students from antidiscrimination laws including Title VI and Title IX. *See* U.S. Department of Education, *Statement by U.S. Secretary of Education Richard W. Riley* (Oct. 10, 1997).

²⁶ Furthermore, numerous amendments have been proposed (unsuccessfully) to apply broader civil rights protections to the Opportunity Scholarship voucher program, indicating a current lack

nothing in the statute changes the provisions of the IDEA, which has far fewer protections for private school students).

As highlighted in my initial testimony, public dollars should not be used to fund discriminatory programs. For this and many other reasons discussed in my testimony, state and federal voucher programs must be rejected, and we should focus on funding our public schools, which welcome and serve all students.

Thank you again for the opportunity to provide these additional responses. If the subcommittee would like further information, I would be happy to provide it.

of sufficient anti-discrimination protections for D.C. voucher students. *See, e.g.*, National Coalition for Public Education, [*Previous DC Voucher Amendments*](#) (listing legislation proposing amendments to the D.C. voucher program that would have required compliance with civil rights laws including Title IV, Title VI, Title IX, the Equal Educational Opportunities Act, the IDEA, Section 504, and/or Titles II and III of the ADA).