

Private School Programs that are Subsidized with Taxpayer Funds Continue to Sanction Discrimination and Widen the Equity Gap in K-12 Education

The movement to use taxpayer funds to subsidize private school programs at the expense of the public education system continues to put LGBTQ+ students and educators, particularly those who are also Black, Indigenous, people of color (BIPOC), and people with disabilities, at greater risk. These programs primarily fund private religious schools that can sanction discrimination. There are over 23,000 religious schools that account for over 67% of all private schools in the United States.¹ A recent analysis found that about 75% of private school program funded schools across the country are religious — usually Christian or Catholic, with about 2% identifying as Jewish and 1% identifying as Muslim.² The most common types of private school programs that fund private religious schools include vouchers, tax credit scholarships, tax deduction programs, and education savings accounts.

- **Voucher Programs:** These programs provide students and families with direct government funding to pay for private school tuition. Such programs are perhaps the clearest example of public education funding being used to support private education.
- **Tax Credit Scholarships:** States establish tax credit programs for individual or organization donors where they can contribute to “scholarship organizations,” which are usually privately operated. The organizations then provide students and families with vouchers to be used for private school tuition.
- **Tax Deduction Programs:** Tax deduction programs allow individuals to take a deduction on their annual tax liability based on educational expenses, including private school tuition. Thus, these programs provide an incentive to individuals to send their child to a private school.
- **Education Savings Accounts:** Education savings accounts are one of the newest forms of so-called school choice programs. States establish and fund individual accounts, which families can then use to pay for various educational services. In most programs, parents must commit to not enrolling their child at a traditional public or charter school.

¹ U.S. Department of Education (2017). “Characteristics of Private Schools in the United States: Results From the 2015–16 Private School Universe Survey.” Available at <https://nces.ed.gov/pubs2017/2017073.pdf>

² Klein, Rebecca (2017). “Voucher Schools Championed By Betsy DeVos Can Teach Whatever They Want. Turns Out They Teach Lies.” Huffington Post. Available at (https://www.huffpost.com/entry/school-voucher-evangelical-education-betsy-devos_n_5a021962e4b04e96f0c6093c?ufa=&guccounter=1&guce_referrer=aHR0cHM6Ly90LmNvLw&guce_referrer_sig=AQAAAEuF4d5YpROmCmTN7ae4tFcQnN6GQPym-WWR2Q4TwhcYBfFA2l-2ZLX2_aJLWwATA_26O6qO0xmU7O2bfl3c-p-vkrHvvg7dztnsDuvR_oMZyewXNOYj5yBt3xVl4xfGxGOgWGgaKxio0_HrHX_f0K-afODGS9Bwi59bLmQdQ7m)

In the midst of the COVID-19 pandemic, schemes to divert public emergency relief funds to private school programs, including those that serve wealthy families, are supported at the expense of the public education system that sorely needs these funds to serve the most under-resourced communities in the country.³ During the Spring of 2020, K-12 public schools in Los Angeles received an average award from emergency relief funds of \$716,000 while Sierra Canyon School, a private school in the San Fernando Valley, received a \$3.14 million forgivable loan from the Paycheck Protection Program (PPP).⁴ In New York K-12 public schools received an average of \$386,000 of federal aid. Meanwhile, Poly Prep Country Day School, a private school in Brooklyn, received a \$5.83 million PPP loan.⁵ Advocates continue to monitor PPP disbursements to private schools from the program that is budgeted at \$659 billion.

At the same time, legislation that was recently introduced in New Jersey, S. 3002, would establish a voucher program that requires taxpayer funds be spent to cover the cost of private school enrollment for students whose parents object to activities and materials taught in public schools that violate or conflict with their beliefs regarding sex, sexual orientation, gender identity or expression, conscience, ethics, morality, or religion. In Virginia, H.B. 678 would establish parental choice education savings accounts where a school would not have to alter its creed, practices, admissions policies, or curriculum to receive public funding. These most recent schemes to establish publicly funded private school programs that sanction discrimination against LGBTQ+ students and educators follow a decades long history of similar programs that also allow discrimination based on race and disability status.

In addition, the U.S. Supreme Court's decision in *Espinoza v. Montana* to override the state's no-aid rule that prohibited the use of public funds to pay for religious education via a private school tax credit program raises additional questions on whether states must fund education institutions controlled by religious organizations that are allowed to discriminate.⁶ Chief Justice Roberts wrote in the majority opinion that "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." There are 38 states including Montana that have similar no-aid rules, often called "Blaine Amendments," that are most directly impacted by the court's decision. At least two of these states, Florida and Indiana, already allow the use of public funding for private school programs despite having no-aid rules. Policymakers in 14 states explicitly said these amendments bar the use of public funds to subsidize similar programs. Under the decision, additional steps must be taken to ensure equitable allocation of resources to support public schools that serve under-resourced communities and that safeguards are in place to protect student's civil rights.

³ Leadership Conference on Civil and Human Rights Education Task Force (July 2020). "Re: Docket ID ED-2020-OESE-0091, Comments in Response to Interim Final Rule on CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools." Available at <https://civilrights.org/resource/re-docket-id-ed-2020-oese-0091-comments-in-response-to-interim-final-rule-on-cares-act-programs-equitable-services-to-students-and-teachers-in-non-public-schools/>

⁴ See New York Times. "Private schools and P.P.P." Available at <https://www.nytimes.com/2021/01/13/us/private-schools-ppp-fundig.html#:~:text=in%20on%20P.P.P.-,Funding,designed%20to%20save%20small%20businesses.&text=This%20is%20the%20Coronavirus%20Schools,taking%20place%20during%20the%20pandemic>

⁵ Ibid.

⁶ Blad, Evie (June 30, 2020). "What the Supreme Court's Ruling on Religious Schools Means in Practice." (EducationWeek). Available at <https://www.edweek.org/policy-politics/what-the-supreme-courts-ruling-on-religious-schools-means-in-practice/2020/06>

Multiple Intersecting Forms of Discrimination in Private School Programs

LGBTQ+ students do best at those schools - public or private, religious or secular - that support and affirm them.⁷ These proven supports include policies that protect LGBTQ+ students from harassment and discrimination; educators and other school professionals who support and affirm LGBTQ+ students; the presence of GSAs (Gay Straight Alliances or Gender Sexuality Alliances); and curricular content that presents LGBTQ+ people, history, and issues in accurate, appropriate, and positive ways. In general, schools that provide this support have sufficient resources to provide a secure infrastructure for all students' success. However, except in a limited number of cases involving religious schools run by progressive denominations or sects, this is not the case even in well resourced religious schools that are subsidized with public taxpayer funds at the expense of less well resourced public schools.

Findings from GLSEN's National School Climate Survey historically show that private religious schools are often where LGBTQ+ students face the most significant challenges.⁸ LGBTQ+ students attending private religious schools experience more discrimination than LGBTQ+ students at any other type of school, and have the least access to the essential supports for their wellbeing and academic achievement. Thus, the majority of the private schools benefiting from private school programs are also the school settings where LGBTQ+ students are the least likely to be able to learn and thrive.

A recent investigative report found that private religious schools that receive millions in taxpayer dollars openly operate so-called counseling programs for LGBTQ+ students that establish damaging conversion therapy practices in these schools.⁹ A national study of a sample of private schools found that at least 14% of surveyed religious schools actively discriminate against LGBTQ+ students and staff.¹⁰ At least 5% of these schools had explicit policies against hiring or retaining LGBTQ+ staff. Research on the practices in Florida schools uncovered instances of discrimination that mirror national trends: at least 10% had zero tolerance policies for LGBTQ+

⁷ Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). "The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." New York: GLSEN. Available at <https://www.glsen.org/research/school-climate-survey>

⁸ Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). "The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools." New York: GLSEN. Available at <https://www.glsen.org/research/school-climate-survey>

⁹ Klein, Rebecca (June 10, 2020). "Millions Of Taxpayer Dollars Are Going To Schools That Push Conversion Therapy." (HuffPost). Available at https://www.huffpost.com/entry/voucher-programs-conversion-therapy_n_5ed07722c5b6c9605a95e4a2?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAHGPLV13Jk6JtMeeehu1W3f4I92Xpi0WMvmaiAkjmt_sZ8-Ha4QlCNYJ-IQg3OPnboBgV2_wUAhofxbTPdnmNOS-AvT0hiuwm1wyLQ8CemkqV2Nnn307FTrG_rIK4vcP3_zfthSZzaiqABKRXGsLd0DOaVtAEx5MYlu2T5JTVG9Ad

¹⁰ Klein, Rebecca (December 16, 2017). "These Schools Get Millions of Tax Dollars to Discriminate Against LGBTQ students." (HuffPost). Available at https://www.huffpost.com/entry/discrimination-lgbt-private-religious-schools_n_5a32a45de4b00dbbcb5ba0be?fz7=

students, and more than 30% of schools implemented curriculum that denigrated LGBTQ+ students.¹¹

LGBTQ+ students and educators who are people of color not only experience homophobia and transphobia, but also intersecting harms from racism in private religious schools funded by private school programs. These programs have historically sanctioned discrimination and those discriminatory practices continue in the present. The modern movement to privatize education is rooted in the history of white flight to private schools that were allowed to remain segregated.¹² Recent studies conducted on private school programs in Louisiana, Georgia, Milwaukee, Wisconsin, and Cleveland, Ohio found these schools remain segregated with extremely high white student populations and policies that exclude BIPOC students.¹³ The proliferation of rules in private schools that “appear racially neutral,” but are nevertheless discriminatory also continue despite existing legal protections that are intended to prohibit racial discrimination.¹⁴ For example, nearly 20 percent of participating schools — 23 institutions — in Florida’s Hope Scholarship program have racially discriminatory dress code policies.¹⁵

People with disabilities, including those who also identify as LGBTQ+, are impacted by systemic ableist discrimination that is prevalent in private school programs where students and educators often lack full access to protections and services under the Individuals with Disabilities Education Act (IDEA).¹⁶ An analysis conducted by the U.S. Government Accountability Office in 2017 found that differences in key IDEA provisions for eligible children with disabilities in public and private schools include unequal application of free appropriate public education (FAPE) provision,¹⁷ special education teacher requirements, the requirement that students with disabilities be taught alongside nondisabled peers to the extent possible, discipline procedures, and due process rights.¹⁸ Inadequate protections and services can also lead to the exclusion of

¹¹ Klein, Rebecca (August 9, 2018). “Exclusive: Florida Wants to Help Bullied Kids — Unless They’re Gay.” (HuffPost). Available at https://www.huffpost.com/entry/florida-anti-bullying-gay-students_n_5b69d2b2e4b0de86f4a5edcf

¹² Ford, Chris, Johnson, Stephenie, and Partelow, Lisette (2017). “The Racist Origins of Private School Vouchers” (Center for American Progress: Washington, DC). Available at <https://www.americanprogress.org/issues/education-k-12/reports/2017/07/12/435629/racist-origins-private-school-vouchers/>; National Coalition for Public Education. “Students of Color.” Available at <https://www.ncpecoalition.org/lose-rights#Color>

¹³ Ibid.

¹⁴ Fiddiman, Bayliss and Yin, Jessica (May 13, 2019). “The Danger Private School Voucher Programs Pose to Civil Rights.” (Center for American Progress: Washington, DC). Available at <https://www.americanprogress.org/issues/education-k-12/reports/2019/05/13/469610/danger-private-school-voucher-programs-pose-civil-rights/> “Title VI of the Civil Rights Act of 1964 bars any school that receives federal funds from discriminating against students on the basis of “race, color, or national origin.” The IRS also requires that private schools adopt racially nondiscriminatory policies to receive and maintain 501(c)(3) nonprofit status.”

¹⁵ Ibid; Klein, Rebecca (September 7, 2018). “Florida Schools in Anti-Bullying Program Ban Dreadlocks and ‘Progressive’ Hairstyles.” (HuffPost). Available at https://www.huffpost.com/entry/florida-bullying-hope-scholarship-hair_n_5b91e134e4b0cf7b003e273a

¹⁶ Fiddiman, Bayliss and Yin, Jessica (May 13, 2019). “The Danger Private School Voucher Programs Pose to Civil Rights.” (Center for American Progress: Washington, DC). Available at <https://www.americanprogress.org/issues/education-k-12/reports/2019/05/13/469610/danger-private-school-voucher-programs-pose-civil-rights/>

¹⁷ All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education.

¹⁸ See National Coalition for Public Education. “Differences in Key Provisions in the Individuals with Disabilities Education Act (IDEA) for Eligible Children with Disabilities in Public and Private Schools.” Available at <https://www.ncpecoalition.org/gao>; PRIVATE SCHOOL CHOICE: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities GAO-18-94: Published: Nov 16, 2017. Publicly Released: Nov 30, 2017.

students with disabilities from private school programs where schools are not required to admit students who are people with disabilities in the first place.¹⁹

Provide truly adequate funding for public education rather than using limited taxpayer dollars to subsidize private religious schools that sanction discrimination

Federal, state, and local lawmakers must reject private school program legislation that seeks to subsidize private religious schools that can discriminate and instead provide truly adequate funding for public schools. Directing funds to the most disadvantaged students, the majority of whom attend public schools, should always be a priority, but under the effects of the COVID-19 pandemic it is particularly urgent that these funds not be diverted away from these purposes. LGBTQ+ students, particularly those who are transgender, nonbinary, BIPOC, and people with disabilities, are uniquely impacted during this crisis. The strain caused by the pandemic combined with heightened visibility and escalation of systemic racist violence have increased the number of students who have social-emotional learning and mental health needs that create barriers to learning.²⁰ Educational attainment projections for the duration of the COVID-19 pandemic anticipate declining proficiency across multiple areas of study, including reading and mathematics.²¹ At the same time state and local governments are facing significant budget reductions that reduce these agencies' capacity to provide additional support.²² Lawmakers should consider equitably allocating resources by adopting Maintenance of Equity Provisions and similar funding models that direct resources to K-12 learning communities where there is the greatest need rather than using limited taxpayer dollars to subsidize private school programs.

Uphold student's civil rights in all K-12 learning communities

The federal government can remove barriers to student wellbeing and educational opportunity in all schools, including private religious schools that are funded by private school programs, by taking action to protect student's civil rights. The Biden-Harris Administration and Secretary of Education-designate Cardona must restore the U.S. Department of Education's role in properly addressing civil rights violations based on race, sex, disability, and all protected classes.²³ In addition, both chambers of Congress must pass the Equality Act, which will update our nation's civil rights laws to prohibit discrimination based on sex, sexual orientation, and gender identity in key areas of life and ensure that religious freedom is both upheld and cannot be used as a pretext for discrimination.

¹⁹ National Coalition for Public Education. "Vouchers Do Not Adequately Serve Students with Disabilities." Available at <https://www.ncpecoalition.org/students-with-disabilities>

²⁰ National Association of School Psychologists. "Providing Effective Social-Emotional and Behavioral Supports After COVID-19 Closures: Universal Screening and Tier 1 Interventions." Available at <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/covid-19-resource-center/crisis-and-mental-health-resources/providing-effective-social%E2%80%93emotional-and-behavioral-supports-after-covid-19-closures-universal-screening-and-tier-1-interventions>

²¹ Soland, Jim, Kuhfeld, Megan, Tarasawa, Beth, Johnson, Angela, Ruzek, Erik, and Liu, Jing (May 27, 2020).

²² McNichol, Elizabeth and Leachman, Michael (July 7, 2020). "States Continue to Face Large Shortfalls Due to COVID-19 Effects." (Center for Budget and Policy Priorities: Washington, DC). Available at <https://www.cbpp.org/research/state-budget-and-tax/states-continue-to-face-large-shortfalls-due-to-covid-19-effects>

²³ See GLSEN's Recommendations to the Presidential Transition Team (2020). Available at <https://www.glsen.org/activity/executive-summary-presidential-transition-recommendations-2020>

It is possible to reform private school programs so they can one day support and affirm all students, but today private religious schools subsidized by taxpayer funded programs sanction discrimination and harm LGBTQ+ students, particularly those who are also transgender, nonbinary, BIPOC, and people with disabilities. Therefore, private school programs that refuse to uphold civil rights obligations should be denied public funding. These programs should also never receive exorbitant taxpayer subsidies that disproportionately increase their share of public funding at the expense of public schools, especially during this time of mass disruption and trauma.