

**Christian Life Commission
Baptist General Convention of Texas**

Private school vouchers are an important Church-state issue. The fundamental principle influencing our opposition to school vouchers is that tax dollars should not be used to finance the teaching of religion.

There are many thriving religiously-affiliated schools. They have at the core of their identity religious teachings and values. It is very important to protect the sanctity of religious content in religiously affiliated schools. State money to religious schools creates a climate of compromise.

Vouchers are a tempting to many, but tax payer money comes with strings attached. It should. Tax payers have a right to direct, through the state agencies they fund, the principles, testing and goals of state funded education. Religious schools who take advantage of vouchers will have to deal with invasive state regulation.

Vouchers - put religious freedom at risk because it will use my tax dollar to fund your religion. State money will be used to pay for religious instruction. These bills clearly say : From *FAQ on HB 1263 "There is no "opt-out" clause. If a school's policy is that students are required to take religion classes or attend religious services, then those policies stand. A parent must be advised of a school's policy when they apply, but if they wish to attend your (religious) school they will have to comply with your (religious) policies." Even if the religious education provided by the school is the religious education desired by the parents, state money should not fund religious education.

Voucher – set up a potential for constitutional challenge. Any voucher program should pay first for the transfer of any child to any other public school regardless of district lines. If parents are not entitled to transfer options to other area public schools, than religious schools are being given preference, not neutrality in these bills. From *FAQ on HB 1263 "A private/religious school does not have to be located in a participating school district to participate." The non-sectarian option (public school within-district transfer or charter school) does have to be within the district in many areas, cross district transfers are not universally available. Texas has "balkanized" school districts (unlike some other states that use county boundaries for school districts, Fla, Ky. etc). If cross district transfer options are not consistently applied, the religious schools are being given preference over the nonsectarian option. One consistent test of constitutionality in church state issues is that nonsectarian options are equally available to sectarian options. In Texas, this is an especially challenging aspect of the proposals.

Vouchers set up a dual set of admissions - These bills allow existing admission requirements of private and religious schools to remain in tact. Many

religious schools limit admission on the basis of religious preference, by using behavior standards or by using IQ standards or other testing and admission standards. From *FAQ on HB 1263 “HB1263 does not, in any way, govern the admissions policy of a school or its educational programs. Private/religious schools remain totally autonomous. However, participating schools – like everyone else – must comply with all federal non-discrimination laws (race, ethnicity, gender and origin). It is imperative that every participating school have its own written, clearly defined admissions policies.”... From *FAQ on HB 1263 “If our school decides that it wishes to participate in the program can we still administer placement tests to students?” HB1263 does not, in any way, govern the admissions policy of a school. If a school has a formal policy to administer placement tests, that is entirely up to the school.” Subject to federal non-discrimination laws that apply to schools already, a participating school only has to admit students who are deemed qualified by the school under its own admissions policy. Any exceptions to that policy is solely up to the participating school.” While we are comfortable with religious preference as a qualification for admission to private schools when funding is by individual gifts and donation. We are not comfortable with the criteria of religious preference, IQ, behavioral standards being a discriminating factor when school funding is tax payer money. Public schools are not allowed to set admissions tests or otherwise chose students for admission to the school. This allows discrimination on the basis of religion, IQ, achievement , behavior where state money is involved.

Vouchers - put religious pluralism at risk because it will tempt the government to decide between good and bad religious schools. As schools choose to participate in the program, the religious teachings of participating schools will come under public scrutiny, increasing the risk of sectarian strife. Are some schools considered “too religious” for inclusion?

Vouchers – put restrictions on curriculum and accountability for religious schools by setting up dual systems of accountability and reporting.

Voucher students are set up to be vulnerable to a double standard of curriculum and accountability in private/religious schools because the voucher students are required to take tests and have their scores reported in ways that are not required of other students in the private/religious schools. From *FAQ on HB 1263 “These voucher programs dictate to religious schools that they must --Administer to voucher students, in the spring, either the prescribed state test or a nationally norm referenced test that is approved by the state (such as Iowa, Stanford, or others)” This is not required of other students in the private/religious school. Also the performance of the voucher students is computed and shared in ways that the other students within the participating school are not subject to: *FAQ on HB 1263 “These voucher programs dictate to religious schools that they --Release the TFS student’s individual test scores to the parents, and the aggregate results to the public (through the Resource Center), and to

researchers designated by the state. This is not required of the other students in the private religious school.

Church State issues require tough decisions. Our forebearers have reasoned carefully where these issues are involved. General principles have to be applied in fact-sensitive cases. Unless one is prepared to accept a complete merger (fund everything, even churches) or a tightly sealed-off separation (fund nothing that even smacks of religion), we will have to draw lines and grapple with the tension created by the "no establishment" and "free exercise" principles of the first amendment. Vouchers tread in a complex area.

This voucher bill is a direct result of the Supreme Court decision, *Cleveland* called the *Zelman* Case. As the voucher debate moves from the Supreme Court to state legislatures, church-state concerns will continue to be important.

- In January the Supreme Court of Florida ruled against one of its state voucher programs. Florida's strict no-aid provision was one basis for the challenge. The court's decision, however, relied on a provision requiring "a uniform, efficient, safe, secure and high-quality system of free public schools," finding the program improperly diverted public dollars into a separate private system that competed with the constitutionally required public schools.
- Opponents of parochial school vouchers scored another recent victory when the Maine Supreme Court upheld a voucher program that specifically excluded religious schools from participation. The court held that while *Zelman* permits authorization of some form of tuition payments to religious schools, more recent decisions including *Locke v. Davey* hold that a state is not compelled to do so. The court held the Maine program falls within the "play in the joints" in the two religion clauses—neither improperly infringing on the Free Exercise Clause nor violating the Establishment Clause.
- Last fall, in response to Hurricane Katrina, Congress passed an educational aid package that included payments from public school districts to private schools in areas directly impacted by the storm or areas that accepted displaced students. The BJC opposed the effort. This first-ever national voucher measure passed in part due to promises that it would be a one-time-only emergency measure. As many voucher opponents feared, in April it appeared the program would be used as a means to establish a more lasting voucher system. A last minute compromise funneled the much needed additional assistance to public school districts
- Government regulation of religious schools will increase, changing the way in which they provide education. Political demands for accountability in performance will reach those schools previously unencumbered by such standards.

- Most importantly, as the dissenting justices in the Zelman (Cleveland) Case noted, the religious teachings of participating schools will come under public scrutiny, increasing the risk of sectarian strife.
- There is NO guarantee that religious schools will want to accept vouchers or keep them when the regulations of government infringe on the religious nature and teachings of the school.
- Contributions to churches and other religious nonprofits are tax deductible.

There is no comparison with vouchers. In the one case government decides to give money to a religious organization; in the other it declines to take taxes from citizens and charities. Tax exemptions and charitable deductions lift a burden on religion rather than extend a financial benefit. They are viewed as a **permissible accommodation** rather than an **impermissible advancement** of religion.

The fundamental principle influencing our opposition to school vouchers is that tax dollars should not be used to finance the teaching of religion, this is **advancement** of religion pure and simple.

Vouchers have always caused controversy in debates about public education. There is certainly no national consensus that they lead to higher academic achievement or are more cost-effective than public schools. Texas schools need funding and excellence. Vouchers are a diversion from the primary responsibility of Texas legislature to create the once in a generation model to fund its schools.

Texas Constitution and Religion Clauses

The Texas Constitution, like that of many other states, has a couple of clauses that are stricter than the federal Establishment Clause, and that explicitly disallow any religious test for office or state funding for religious activities:

Tex. Const., Art. 1, Section 4:

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Tex. Const., Art. 1, Section 5:

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Tex. Const., Art. 1, Section 6:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Tex. Const., Art. 1, Section 7:

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

The second half of the religious test clause doesn't appear to protect avowed atheists, although I would be surprised if there has ever been an occasion when that provision's exception came into use.

Nonetheless, the other clauses could more than replace the federal Establishment Clause, if need be.

Indeed, section 7 shows that Texas is one of the many states that adopted a Blaine amendment, which is stricter than the federal Constitution in that it explicitly prohibits public funds from going to religious entities.

FAQS about HB 1263 from Schools...

In the event you have difficulty with the links above, here are the URLs you can copy and paste: To find your representative and how to reach him or her: <http://www.capitol.state.tx.us/fyi/fyi.htm>: To contact Tom Craddick, the Speaker of the House: <http://www.house.state.tx.us/members/email.php?dist=82&rep=tom.craddick>

1. HB 1263 applies to children living in which public school districts?

It applies to the following districts in the following counties:

Bexar: San Antonio ISD, Edgewood ISD, South San Antonio ISD

Dallas: Dallas ISD

Harris: Houston ISD

Tarrant: Ft. Worth ISD, Masonic Home ISD

Travis: Austin ISD

2. Does this bill apply to suburban school districts? Rural school districts?

No. This is an urban, inner-city school choice bill only.

3. Which private/religious schools are eligible to participate in the TFS program?

Participation in the program is completely voluntary, but if a school wishes to participate, they must be accredited or have applied for accreditation. Also, a school must have financial statements in order to prove its actual annual average cost per student in order to determine the amount of a child's voucher. A private/religious school does not have to be located in a participating school district to participate.

4. What exactly does "school choice" mean?

School choice simply means that a parent has the ability to choose the school – public or private – that they feel is best for their child, based on the simple fact that a parent knows what is best for their child and loves their child more than any institution.

5. What is a "voucher?"

A voucher is one of the ways in which school choice can be achieved. It is by no means the only way. Other examples of popular "vouchers" are the GI Bill, Project Head Start, Medicaid, and foodstamps.

6. What would be the amount of a TFS voucher?

It depends. The amount of a voucher is limited to 90% of the state's average cost per pupil, which changes each year. This year that 90% amount is \$6,937. It would be slightly higher next school year.

This amount - \$6,937 – would be the maximum limit. But the actual amount of a child's voucher is the lesser of this amount OR the receiving school's actual average annual cost per student.

Example #1: If a school's enrollment last year was 326 students and the school's total annual operating expenses for last year was \$1,374,090, then a TFS child attending that school would have a voucher in the amount of \$4,215 (\$1,374,090 divided by 326 students = \$4,215).

Example #2: If a school's enrollment last year was 296 students and the school's total annual operating expenses for last year was \$2,205,200, then a TFS child attending that school would have a voucher in the amount of \$6,937 (the lesser of: 90% of the statewide average (\$6,937) or \$2,205,200 divided by 296 students = \$7,450).

The exception to this calculation is in the event of a special education child. If you decided to enroll a special education student, the amount of funding that the public school district was receiving for that child would follow the child in total and would not be subject to the 90% limitation outlined above.

7. What "strings" are attached to the scholarships/vouchers in terms of a participating school?

A participating school must do the following:

- Hold a lottery drawing in cases where the school has more qualified TFS applicants than available seats;
- Administer to TFS students, in the spring, either the prescribed state test or a nationally norm referenced test that is approved by the state (such as Iowa, Stanford, or others);
- Submit an invoice to the state on a monthly basis on behalf of the TFS children with an affidavit certifying that the students were enrolled in the previous month;

--Release the TFS student's individual test scores to the parents, and the aggregate results to the public (through the Resource Center), and to researchers designated by the state.

8. Does a private/religious school have to participate in the TFS program?

A school can choose whether or not to participate and can always withdraw from the program. A school that does not initially apply for participation can always apply at a later date if they wish.

9. If our school decides that it wishes to participate in the program do we have to change our admissions policy? Our curriculum?

HB1263 does not, in any way, govern the admissions policy of a school or its educational programs. Private/religious schools remain totally autonomous. However, participating schools – like everyone else – must comply with all federal non-discrimination laws. It is imperative that every participating school have its own written, clearly defined admissions policies.

10. If our school decides that it wishes to participate in the program can we still administer placement tests to students?

HB1263 does not, in any way, govern the admissions policy of a school. If a school has a formal policy to administer placement tests, that is entirely up to the school.

11. Do we have to accept all TFS students who apply at my school?

Subject to federal non-discrimination laws that apply to schools already, a participating school only has to admit students who are deemed qualified by the school under its own admissions policy. Any exceptions to that policy is solely up to the participating school.

12. What do we do if we have more TFS applicants than we have seats for?

If a school has more qualified TFS applicants than it has seats available for them, a random drawing, or lottery, must be held. However, preference can be given to four classes of students: Students who were in your school the previous year, siblings of students who were in your school in the previous year, new TFS students who were victims of violence at their public school, and new TFS students transferring from a failing or low-performing public school.

13. How and when do we get paid for TFS students?

Participating school will get paid for TFS students on a monthly basis, in arrears, through the Texas Education Agency (TEA). A school will be required to send the state an invoice-type document that will include an affidavit for the school to certify that the students on the invoice was actually in school that month. The TEA has 30 days to issue the check.

14. What children are eligible to participate in the TFS program?

First, a child must live within the boundaries of one of the eight participating districts outlined in #2 above – no exceptions. Then a child must meet one of the following:

- A student from a household whose annual income does not exceed 200% of the reduced price lunch program;
- A student with limited English proficiency (ESL);
- A special education student;
- The student is a victim, or the sibling of a victim, of violence at the hands of another student at their public school;
- The student is at risk of dropping out as defined by the state; and,
- The student is a dropout.

15. Who would administer and conduct the application process (qualifying students, working with parents, processing applications, etc.)? Does the private school have to do that?

The schools do not have to do any of this. The bill provides for all of this to be conducted either by the TEA, or a TEA appointed Schools of Choice Resource Center. They will handle working with parents to explain the program, the process, the options, etc., as well as the entire application and qualifying process.

16. Will we be required to take students that we are not equipped to teach, such as severely physically challenged children?

No. A school's existing admissions policy remains intact and it is up to the school to make any exceptions as they wish.

17. If we do choose to enroll a special education child, what would be the amount of that child's voucher?

If a school enrolls a special education student, the amount of funding that the public school district was receiving for that child would follow the child in total and would not be subject to the 90% limitation outlined in #7 above.

18. I hear so many different stories about the TFS bill, where do I go for reliable and up-to-date information?

The Texas School Choice Resource Center Foundation is your source of up-to-date, accurate, and complete information. Visit this web site frequently to be kept current on recent developments and changes (www.texaschoice.org).

19. When would the program start?

The program would start in the 2005-06 academic year.

20. How complicated would the paperwork be in terms of a school's enrollment and requesting payment from the state?

The school enrollment form consists of a simple three page form. Certain attachments are necessary, such as the school's accreditation letter or its application for accreditation, and the previous year's financial statement. The Resource Center will assist schools, as needed, in their enrollment.

21. What has been the experience of the charter schools in terms of getting their monthly payments from the state on a timely basis?

The history of charter schools, who get their funds from the state on a monthly basis, has been excellent.

22. How motivated would "choice" parents be to get and stay involved in their child's school?

It is hard to say. But it is recommended that schools ask all TFS parents to sign a Parent Commitment Pledge form that serves to gain a parent's involvement and engagement in the school and in their child's education. The parent would be expected to adhere to all written policies of a school, including a policy for parental involvement.

23. What if the amount of a child's voucher is not enough to cover our regularly published tuition amount or required fees?

The parents are free to supplement the amount of the voucher if they wish. The school is also free to scholarship the difference or work out some arrangement with the parents.

24. Is transportation included in the bill?

There is no transportation component included in the current bill.

25. Can we expel a voucher student for cause?

Yes. A school's policies remain intact and they are free to enforce such policies without state interference.

26. Is there an "opt out" clause for voucher students so that they can not be required to participate in religion classes/activities?

No, there is no "opt-out" clause. If a school's policy is that students are required to take religion classes or attend religious services, then those policies stand. A parent must be advised of a school's policy when they apply, but if they wish to attend your school they will have to comply with your policies.

27. If our school decides to participate, can we set the number of seats that our school would set aside for TFS students in advance?

Yes. Every school should adopt its own written policies with respect to the enrollment of TFS students, especially if they wish to limit the number of seats allocated.

28. If a parent comes to our school and wants to enroll under the TFS program, how will we know they are approved?

They will have a certificate, or voucher, that shows that they are approved. If a parent presents that certificate, the school can have confidence in knowing that the parent/child is qualified and approved for a voucher. At that point, it's simply a matter of the school following its own admissions policy and procedures.

Texas Constitution and Religion Clauses

The Texas Constitution, like that of many other states, has a couple of clauses that are stricter than the federal Establishment Clause, and that explicitly disallow any religious test for office or state funding for religious activities:

Tex. Const., Art. 1, Section 4:

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Tex. Const., Art. 1, Section 5:

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Tex. Const., Art. 1, Section 6:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Tex. Const., Art. 1, Section 7:

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

The second half of the religious test clause doesn't appear to protect avowed atheists, although I would be surprised if there has ever been an occasion when that provision's exception came into use.

Nonetheless, the other clauses could more than replace the federal Establishment Clause, if need be.

Indeed, section 7 shows that Texas is one of the many states that adopted a Blaine amendment, which is stricter than the federal Constitution in that it explicitly prohibits public funds from going to religious entities.