

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: January 13, 2014

AGENDA ITEM No. 14-01-14

ACTION ITEM: (Y/N) N

SUBJECT: N.C. School Boards Association Voucher Litigation

INFO. CONTACT: Dr. Gerri Martín, Superintendent PHONE: (919) 732-8126

ATTACHMENTS:

1. E-mail dated December 16, 2013 from Ed Dunlap, Executive Director
2. Email dated January 8, 2014 from Leanne Winner, Dir. Of Governmental Relations
3. Letter dated December 19, 2013 from Rep. Paul Stam (referenced in Winner's email Item #2)
4. *Lawsuit Challenges Constitutionality of Voucher Law* Press Release
5. RESOLUTION

PURPOSE: The purpose of this agenda item is to present a request received from the North Carolina School Boards Association for local education agencies to consider joining litigation as plaintiffs challenging the constitutionality of the recently enacted voucher legislation.

BACKGROUND: On December 16, 2013, an email was received from Ed Dunlap, Executive Director for the N. C. School Boards Association, containing information regarding a lawsuit which has been filed by NCSBA and individual plaintiffs. See attached.

On January 8, 2014, an email was received from Leanne Winner, Director of Governmental Relations for the N.C. School Boards Association, written in response to a document posted on the NCSBA web page, document written by Rep. Paul Stam. You will find a copy of both of these documents attached. Also included in your board packet is the LAWSUIT CHALLENGES CONSTITUTIONALITY OF VOUCHER LAW press release dated December 16, 2013.

NCSBA has provided a DRAFT Resolution for the board's review should the Board of Education wish to consider joining the litigation as a plaintiff.

FINANCIAL IMPACT: There would be no cost to local boards as the N.C. School Boards Association's Legal Assistance Fund will bear the litigation costs.

RECOMMENDATION: The Superintendent recommends the Board of Education discuss the request received from the North Carolina School Boards Association.

NCSBA Voucher Litigation

11/19/2013

Ed Dunlap <noreply@eboardsolutions.com>

Mon, Dec 16, 2013 at 11:01 AM

Reply-To: edunlap@ncsba.org

To: patricia.coleman@orange.k12.nc.us

This morning, NCSBA and four individual plaintiffs from Buncombe, Hertford, and Rockingham counties filed a lawsuit challenging the constitutionality of the recently enacted voucher legislation. We have also issued a press release, which is attached. The program allows private schools to receive up to \$4,200 for each eligible student they enroll, beginning with the 2014-15 school year. There is no state oversight of these schools, and the legislation does not require them to meet any substantive educational standards or engage in non-discriminatory admissions.

In addition, funding for this program will come from the public schools. Local boards of education will have to return to DPI the per-pupil state allotment for each voucher student who attended the public schools during the spring semester prior to their enrollment in private school. Unfortunately, those students will not be accounted for until October 1, well after the school year begins. Therefore, districts will be required to revert funds that they have already planned for and committed for the year.

The Board of Directors of the NCSBA voted to file this lawsuit given the significant legal questions the voucher program raises and its potential impact on school systems across the state. A copy of the complaint is posted on NCSBA's website at www.ncsba.org/voucher.

We are asking local boards of education to join the litigation as plaintiffs, in the same way that local boards participated in the eye exam and virtual charter school litigation. There would be no cost to local boards that choose to participate. The Association's Legal Assistance Fund will bear the litigation costs, and, assuming no unresolvable conflicts (which we do not anticipate), your local board would be represented by the same legal counsel who are representing the Association and the individual plaintiffs. We are pleased to be represented by former Supreme Court Justice Bob Orr, who authored the second *Leandro* decision, and Eddie Speas, a former Chief Deputy Attorney General of North Carolina and General Counsel to Gov. Bev Perdue, both of Poyner Spruill.

We have attached a draft resolution that local boards can adopt in order to join the litigation. If your board would like to participate as a plaintiff, it will have to vote to adopt the resolution during open session of a properly noticed public meeting. Please consult with your board attorney about scheduling and posting a meeting, if you plan to consider the resolution outside of your regular meeting schedule. Please let us know as soon as possible whether this item will be added to your agenda, so that we can ensure that all boards who want to participate in the litigation have the opportunity to do so.

Once your board has adopted the resolution, please return it to me. We anticipate amending the complaint in mid- January to add local boards who have voted to join the suit as plaintiffs, so if you are able to pass the resolution prior to January 15, please do so. We welcome resolutions passed throughout the month of January, although boards that vote after January 15 will have to be added at a later date.

We feel this is an important issue for local boards, and we hope your local board will join the lawsuit. If you have any questions, please feel free to contact us, at 919-841-4040.

Ed Dunlap
Executive Director
North Carolina School Boards Association

2 attachments



VoucherLitigationRelease.docx

18K



VoucherLitigationResolution.docx

23K



Patricia Coleman
patricia.coleman@orange.k12.nc.us

E-mail from Representative Paul Leubke

1/8/2014, 10:51 AM

Leanne Winner <noreply@eboardsolutions.com>
Reply-To: lwinner@ncsba.org
To: patricia.coleman@orange.k12.nc.us

Wed, Jan 8, 2014 at 10:51 AM

Dear Patricia:

Representative Paul Luebke requested that NCSBA send you the following information. Please see below.

Leanne Winner
Director of Governmental Relations
NC School Boards Association

To: School Board Members of North Carolina Public Schools

From: Rep. Paul Luebke (30th House District – Durham)

I write in response to a document posted on the NC School Board Association web page written by Rep. Paul Stam of Wake County. Rep. Stam would have you believe that the private-school voucher program, passed as a bill in 2013 by the Republican majority in the General Assembly and signed into law by Gov. McCrory, is good for the children and more generally for the people of North Carolina.

The reality is quite different.

As passed during the 2013 session, vouchers can be used to pay tuition at private schools, including private religious schools. Besides paying tuition, vouchers can also be used to purchase textbooks and to pay for tutoring.

Stated directly, the private-school voucher program uses public money to enable students to pay tuition at private schools. The voucher program has been established by powerful legislators whose actions strongly suggest they do not want the public schools to succeed at providing all children a sound education.

In fact, these legislators view our North Carolina public schools as failures. They want to take public monies that otherwise could be used for the public schools, and support private schools with those tax dollars.

Listen to the voucher program advocates; you will hear them say time and time again that public schools are not doing their jobs well. Furthermore, according to pro-voucher legislators, K-12 education should become a competition between the public schools and the taxpayer-funded private schools.

But it is not a fair playing field. As written in the 2103 statute, the private-school competitors to the public schools do not have to follow any academic standards, do not have to hire licensed teachers, and do not have to conduct a financial review, unless a private school has received more than \$300,000 in voucher payments from the program (about 70 students per school).

In 2014-15, the first year of the voucher program, vouchers can only be given to families of four making less than \$44,000. But in subsequent years, a student can receive a voucher no matter how high the family income is.

Unlike public schools, the private schools receiving taxpayer dollars do not have the same obligations to all children. They do not have to provide transportation to and from school, do not have to serve a free or reduced-price lunch, and do not have to provide services to students with special needs. They are not required to admit all children who apply to a private school.

North Carolina has joined eight other states and five local governments who already have a voucher program. Voucher advocates will tell you that their private school students perform better than public school students, but independent social science research does not support that claim.

It is important to recognize that the so-called "school choice" advocates in North Carolina are part of a nationwide movement to use more taxpayer funds for vouchers, and to underfund the public schools.

Non-profit organizations such as the Friedman Foundation (edchoice.org) have donated millions of dollars to support advocacy for private school vouchers. Their long-term goal is to have taxpayer dollars in all fifty states be allocated to private schools via a voucher program.

Finally, Rep. Stam's document claims that the private-school voucher program is no threat to the public schools of North Carolina. That is simply not true, and his analogy with the public and private university systems in North Carolina is inaccurate and misleading. If the voucher program thrives, the bottom line is there will be less state funding for the public schools.

Please join many North Carolina legislators and me in continuing our battle against the voucher program, as well as continuing our battle for more funding for teacher salaries and for public school programs that benefit each child in North Carolina.

For more information, feel free to contact me at PAUL@NCLEG.NET or 919-733-7663



North Carolina General Assembly
House of Representatives

PAUL STAM
SPEAKER PRO TEMPORE
OFFICE ADDRESS: 612 LEGISLATIVE OFFICE BUILDING
300 N SALISBURY STREET
RALEIGH, NC 27603-5025
TELEPHONE: (919) 733-2962
(919) 754-3175 FAX
EMAIL: paul.stam@ncleg.net
DISTRICT: SOUTHERN WAKE COUNTY (37)

COMMITTEES:
APPROPRIATIONS, SUB. EDUCATION
EDUCATION
ELECTION LAW
FINANCE
JUDICIARY, SUB. B
REGULATORY REFORM
RULES

December 19, 2013

Dear School Board Member:

You are being asked by the School Board Association to join the North Carolina Association of Educators (NCAE) in lawsuits against Opportunity Scholarships for low-income children. As you make your decision I hope you will consider:

1. **Opportunity Scholarships are not unconstitutional.** See the attached document from North Carolina Institute of Constitutional Law: "An Opportunity Scholarship Program Would Not Violate the Constitutional Requirement for a General and Uniform System of Free Public Schools."
2. **Opportunity Scholarships can save the LEAs money in the long run.** In Fiscal Year 2016-17, this program could save the LEAs between \$13.3 million and \$15.4 million. See the attached fiscal memo prepared by the non-partisan Fiscal Research Division.
3. **Opportunity Scholarships improve public education.** Eighteen credible studies on school choice programs, like Opportunity Scholarships, demonstrate that school choice programs improve public schools. Not one empirical study has shown that outcomes at public schools worsen as a result of these programs. See the attached document from the Friedman Foundation and page 3 of Representative Bryan's "School Choice Talking Points."
4. **Don't believe everything you read in the news.** Expect to see many news articles on the upcoming lawsuit, most of which are full of nonsense. My attached press release, "More Crazy Attacks on Opportunity Scholarships," addresses three such recent attacks. Also see "Common Misconceptions."

If you have any questions about the Opportunity Scholarship Program and how it benefits NC children and our state, please feel free to contact me at my law office (919-362-8873).

Public School Boards have nothing to fear (and a lot to gain) from private schooling. Do the 35 private four-year colleges and universities that receive needs-based scholarships for North Carolina residents threaten the University of North Carolina? I don't think so.

Sincerely,

Representative Paul Stam

LAWSUIT CHALLENGES CONSTITUTIONALITY OF VOUCHER LAW
For Immediate Release: Monday, December 16, 2013

A lawsuit filed today in Wake County Superior Court challenges the constitutionality of legislation passed earlier this year that creates a private school voucher program using public funds. Under the legislation, which takes effect in the 2014-15 school year, a private school can receive up to \$4,200 in public funding for each eligible student that it enrolls. The legislation does not require that a student struggle academically or attend a poorly performing public school in order to receive a voucher. It also does not require any assurance that public funds will be spent to provide students with an adequate education and one that is offered on a non-discriminatory basis.

The suit was filed by four individual taxpayers, three of whom have children attending public schools, and the North Carolina School Boards Association (NCSBA), a nonprofit, nonpartisan membership association that represents all 115 local boards of education in the state and the Board of Education of the Eastern Band of the Cherokee Nation.

The legislation initially appropriates \$10 million in public funds. The complaint alleges that public funding will rise to \$50 million in future budget cycles.

“This challenge raises important questions about the use of public funds and our commitment to North Carolina’s students,” said Shearra Miller, president of the NCSBA and a member of the Cleveland County Board of Education. “By diverting funding from the public schools, vouchers have the potential to significantly damage individual school systems, particularly in smaller districts. As a local board member, I am concerned about the impact that will have on our students. In addition, the voucher program does not ensure that private schools that receive public funding will adhere to our constitution’s promise that students will have the opportunity to receive a sound basic education and will not face discrimination. Given all of these issues, the NCSBA Board of Directors felt strongly that the organization should raise these questions in court.”

The complaint asserts that the legislation violates the state constitution by:

- Using public dollars for a non-public purpose—private education opportunities outside of the constitutionally required “general and uniform system of free public schools;”
- Failing to require participating private schools to adhere to any substantive educational standards or practice non-discriminatory admissions;
- Diverting public dollars from the State School Fund, which is to be used “exclusively for establishing and maintaining a uniform system of public schools;” and
- Creating a system of selective secondary educational opportunities that denies students equal opportunities.

For additional information, contact Robert Orr with Poyner Spruill at 919-783-1015 or rorr@poynerspruill.com.

DRAFT

BOARD OF EDUCATION RESOLUTION

WHEREAS, the North Carolina General Assembly passed Senate Bill 402 (hereafter, "the budget bill") in July 2013; and

WHEREAS, the budget bill includes a provision appropriating \$10 million to provide private school vouchers;

WHEREAS, the fiscal note prepared for an earlier version of the voucher legislation indicates the General Assembly's intent to increase annual appropriations for the program to \$50 million per year;

WHEREAS, the voucher program created in the budget bill does not require participating private schools to provide students with the opportunity to receive a sound basic education, as required by the N.C. Constitution;

WHEREAS, the voucher program created in the budget bill does not require participating private schools to engage in non-discriminatory admissions practices;

WHEREAS, the voucher program requires the State Board of Education to reduce funding to each local board of education in an amount equal to the local board's per pupil allocation for average daily membership multiplied by the number of students who have received vouchers and were enrolled in the local board's schools during the prior semester;

WHEREAS, reducing funding to public schools to fund a private school voucher program, particularly in the wake of substantial cuts to public education funding during the previous five years, will significantly impair local boards' ability to ensure that students have the opportunity to receive a sound basic education, as required by the N.C. Constitution;

WHEREAS, the voucher program created in the budget bill uses public funds for a non-public purpose, in violation of the N.C. Constitution;

NOW, THEREFORE, BE IT RESOLVED, the _____ Board of Education hereby agrees to join as a plaintiff the pending litigation, captioned *Reverend Robert Richardson, III, Michael and Delores Galloway, Steven W. Sizemore, and the North Carolina School Boards Association v. the State of North Carolina, the North Carolina State Board of Education, and the North Carolina State Education Assistance Authority*, and authorizes the attorneys engaged by the NCSBA and other plaintiffs to represent the Board of Education in the litigation, with the litigation costs to be borne by the NCSBA's Legal Assistance Fund.

Adopted this ____ day of _____, 2013.

Chairperson

Superintendent