

April 26, 2023

Assembly Committee on Ways and Means
Chair, Assemblywoman Daniel Monroe-Moreno

Re: Opposition to AB400

Honorable Chair Monroe-Moreno and Committee Members,

Educate Nevada Now (“ENN”), powered by The Rogers Foundation, is a nonpartisan education policy organization focused on ensuring all students have the resources they need to be successful, regardless of their background or zip code. On behalf of ENN, thank you for the opportunity to provide comment in opposition to AB400, an omnibus education bill that includes expansion of public funding to unaccountable and discriminatory private schools and that unconstitutionally diverts public education dollars, among other issues of concern.

Although there are positive aspects to AB400, ENN opposes the bill for the following reasons:

1. AB400 diverts more public dollars to private school vouchers, while avoiding meaningful accountability measures or prohibitions against discrimination.

AB400 diverts scarce resources to a private school voucher scheme that lacks accountability or results, and that allows private schools to freely discriminate against students and families. Section 48 institutes automatic funding increases to the voucher scheme overall, increases in the maximum funding per pupil, and expands access to vouchers by increasing the income eligibility threshold. According to poverty guidelines, a four-person household making up to \$150,000 per year will now be eligible for a private school voucher.¹

Private school voucher programs across the country have been fraught with waste and abuse. Funds have been mismanaged, unaccounted for, or used for services irrelevant to education.² Nevada’s voucher program fails to collect any meaningful data that would aid in understanding where funding goes and how it affects student outcomes.

AB400 would create more accountability and reporting requirements for *public* schools, but private schools receiving vouchers continue to operate with little oversight. This bill would create the Office of School Choice

¹ U.S. Dept. of Health and Human Svcs. Poverty Guidelines, 88 F.R. 3424 (01.18. 2023).

² See Amanda Morgan, *Commentary: School Voucher Plan Fraught with Problems*, Las Vegas Rev. Journal, May 6, 2017, available at <https://www.reviewjournal.com/opinion/commentary-school-voucher-plans-fraught-with-problems/>.

but fails to assign the Office with any responsibility to oversee or hold accountable the voucher scheme.³ The Office itself would be wholly ineffective and unnecessary. Even the Commission on School Funding’s proposed role in monitoring the voucher scheme limits it to reviewing what little data private schools might provide, rather than mandating voucher recipient schools take assessments or collect information comparable to public schools.⁴ It also creates new reporting requirements for public and charter schools, and gives the Governor authority to direct remediation strategies to those schools, but deliberately excludes private schools from these measures.⁵

Again, AB400’s expansion of voucher programs misdirects public dollars and brands questionable institutions with a stamp of legitimacy, but it offers none of the accountability taxpayers would normally expect to follow millions of dollars in public funds. Insulating private school voucher programs from transparency and accountability protections that apply only to public schools flatly contradicts the Governor’s pledge to “raise the bar on expectation and accountability to a level not yet seen in Nevada,” and to “ensure Nevada’s systems of accountability are robust and enforced.”⁶

Additionally, private schools can be eligible for public dollars, but continue to expel or turn away students for almost any reason - religion or lack thereof, LGBTQ status, inability to pay additional fees, and a variety of other student needs or disabilities. Unfortunately, “school choice” often means the school’s choice in selecting students, not the other way around.

Private school voucher schemes have been and continue to be a losing strategy throughout the country. We urge lawmakers to reject AB400’s significant expansion of the Educational Choice Scholarship voucher program.

2. Efforts to divert State Education Fund dollars to other purposes likely violate the intent of the Pupil-Centered Funding Plan and the letter of the Nevada Constitution.

AB400 also aims to revert Education Stabilization Account (“ESA”) funds held within the State Education Fund to two program accounts outside the State Education Fund. Though teacher pipeline and early literacy are incredibly important, this bill would effectively divert public education dollars that have already been allocated to districts and maintained in the State Education Fund back into the State General Fund.

From a policy perspective, the diversion of these large sums of money is a dangerous precedent to set and undoes a critical aspect of the PCFP - setting the state up to maintain increases to public education dollars

³ Assem. Bill 400, §45 (fails to compel private schools to provide meaningful data or to take assessments comparable to public schools, and fails to authorize the Office to hold private schools accountable for poor performance).

⁴ *Id.* at Sec. 23(1)(f), (2)-(4).

⁵ *Id.* at Sec. 23(2)-(4).

⁶ *See*, Governor Joe Lombardo’s State of the State Address (Jan. 23, 2023) at 6 (accessible at https://www.leg.state.nv.us/Division/Research/Documents/SOTS_2023.pdf)



and move towards adequate funding.⁷ These programs should be funded with dollars outside of and unrelated to State Education Fund appropriations.

Further, this diversion of funds creates constitutional concerns. The ESA is contained within the State Education Fund and consists of funds already allocated to districts and reverted back to the ESA. Excess funds in the ESA (beyond the 15% threshold) must be reverted back to the State Education Fund.⁸ Diverting funds already allocated to districts back to the **State General Fund** may run afoul of Article 11, Sec. 6 of the Nevada Constitution and the Supreme Court's decision in *Schwartz v. Lopez*.⁹ *Lopez* prohibited the state from diverting funds allocated to public education to programs or services outside the operation of K-12 public schools.¹⁰ Much like the unconstitutional funding mechanism for 2015's Education Savings Accounts, AB400's diversion of public education funds to other purposes may also violate the law.

ENN strongly supports improving access to early childhood education and addressing the teacher shortage, but we urge lawmakers to avoid using State Education Fund dollars to support these programs. The PCFP rightly aimed to create a "lockbox" for public K-12 dollars, and maintaining that safeguard is critical to achieving adequate funding for our students.

Thank you for the opportunity to provide comment in opposition of this bill.

Respectfully,

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⁷ *Id.* at Sec. 15(3)(a)-(b)The programs would divert a total of two percent of *all* appropriations and authorization from the State Education Fund, excluding the Education Stabilization Account.

⁸ Nev. Rev. Stat. §387.1213(1)-(3), (5).

⁹ *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016).

¹⁰ *Id.* at 132 Nev. at 753-54, 382 P.3d at 901-02.