

Testimony on S.45

An act relating to the eligibility of students attending approved independent schools that are parochial schools to be eligible for dual enrollment courses

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Review of bill

- The bill proposes to permit a student who attends an approved independent school that is a parochial school to be eligible for dual enrollment courses. It accomplishes this by eliminating the requirement that a student's district of residence must pay publicly funded tuition to the approved independent school on behalf of the student. This change would also permit a student who attends a nonparochial approved independent school without the use of publicly funded tuition to be eligible for dual enrollment courses.

Background

- 2011 Acts and Resolves No. 58, Sec. 23, created the dual enrollment program by adding 16 V.S.A. § 913. A student attending an approved independent school that was a parochial school was able to take advantage of dual enrollment.
- 2013 Acts and Resolves No. 77 repealed 16 V.S.A. § 913 and included the dual enrollment program under a new subchapter on flexible pathways. Dual enrollment was included under 16 V.S.A. § 944, and it permits a student to take advantage of dual enrollment if the student is enrolled in an approved independent school in Vermont to which the student's district of residence pays publicly funded tuition on behalf of the student, which effectively excludes parochial schools (under the Vermont Constitution; see below).

Constitutional considerations

- U.S. Constitution
 - 1st Amendment (Establishment Clause) -- "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." (emphasis added)
 - *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (Supreme Court)
 - Supreme Court upheld the constitutionality of Cleveland's school voucher program against a challenge under the Establishment Clause. Parents could use vouchers for any private school, whether secular or parochial. 82% of participating schools were

parochial, and 96% of students using the vouchers attended parochial schools.

- The Supreme Court upheld the program on the basis that it was neutral with respect to religion and provided assistance to a broad class of citizens who directed the government aid to parochial schools wholly as a result of their genuine and independent private choice.
- *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017) (Supreme Court)
 - Church, which operated religious preschool and daycare program, brought action asserting free exercise claims challenging denial of church's application for competitively-awarded grant for purchase of rubber playground surfaces, which denial was based on policy of denying grants to religiously affiliated applicants.
 - The Supreme Court held that denial of church's application for grant to purchase rubber playground surfaces was denial of church's free exercise rights.
- *Taylor v. Town of Cabot*, 178 A.3d 313 (2017) (Vermont Supreme Court)
 - Municipal taxpayers challenged town's use of federally derived funds for the purpose of repairing a historic church.
 - Vermont Supreme Court cited *Trinity* in denying preliminary injunction.
- Vermont Constitution
 - Article 3 of Chapter 1 (Compelled Support Clause) — “no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience” (emphasis added)
 - *Chittenden Town School District v. Department of Education*, 169 Vt. 310 (1999) (Vermont Supreme Court)
 - Vermont Supreme Court held that a school district violates the Compelled Support Clause when it reimburses tuition for a parochial school in the absence of adequate safeguards against the use of such funds for religious worship/instruction.

- Application to Vermont dual enrollment program
 - Tuition is paid to postsecondary institutions, not to approved independent schools.
 - The bill is neutral with respect to religion; students attending any approved independent school, secular or parochial, would be eligible on same basis.
 - In his April 4, 2014 testimony, Professor Peter Teachout, Vermont Law School, concluded that “neither the Establishment Clause of the U.S. Constitution nor the Compelled-Support Clause of the Vermont Constitution require the exclusion of students attending private religious high schools in the state from eligibility for publicly funded dual enrollment support.”