

1 S.219

2 Introduced by Senator Champion

3 Referred to Committee on Education

4 Date: January 7, 2022

5 Subject: Education; use of public tuition; religious instruction; certification;
6 antidiscrimination laws; dual enrollment

7 Statement of purpose of bill as introduced: This bill proposes to: (1) ensure
8 compliance with the U.S. and Vermont Constitutions by clarifying that a
9 school district is authorized to pay public tuition to a qualified school or
10 program, regardless of its religious status or affiliation, if the school or
11 program has adequate safeguards to ensure that none of the tuition for which
12 payment is requested has been or will be used to support religious instruction
13 or worship or the propagation of religious views; (2) prohibit a school district
14 from paying public tuition to a qualified school or program, regardless of
15 religious status or affiliation, unless the school or program complies with
16 federal and State antidiscrimination laws applicable to public schools; and (3)
17 clarify under what circumstances a school district shall make dual enrollment
18 available to students who attend a school with a religious mission.

19 ~~An act relating to ensuring compliance with the U.S. and Vermont~~
20 ~~Constitutions in the use of public funds for tuition and in the dual~~
21 ~~enrollment program~~

*An act relating to ensuring compliance with the U.S. and Vermont
Constitutions in the use of public funds for tuition*

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 ~~*** Use of Public Tuition ***~~

3 Sec. 1. FINDINGS AND PURPOSE

4 (a) Chapter 1, Article 3 of the Vermont Constitution, known as the
5 “Compelled Support Clause,” provides that “no person...can be compelled to
6 support any place of worship...contrary to the dictates of conscience...”

7 (b) In *Chittenden Town v. Department of Education*, 38 A.2d 539
8 (Vt. 1999), the Vermont Supreme Court held that a school district may pay
9 public tuition to a school with a religious mission under the Compelled
10 Support Clause if the school has adequate safeguards against the use of such
11 funds for religious worship or instruction or the propagation of religious
12 views.

13 (c) The purpose of Sec. 2 of this act is to define adequate safeguards that a
14 school district must employ to ensure that public tuition is not used for
15 religious worship or instruction or the propagation of religious views.

16 Sec. 2. 16 V.S.A. § 828 is amended to read:

17 § 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

18 (a) A school district shall not pay the tuition of a student except to a public
19 school, an approved independent school, an independent school meeting
20 education quality standards, a tutorial program approved by the State Board
21 ~~an approved education program, or an independent school in another state or~~

1 ~~country approved under the laws of that state or country, nor shall payment of~~
2 tuition on behalf of a person be denied on account of age. Unless otherwise
3 provided, a person who is aggrieved by a decision of a school board relating to
4 eligibility for tuition payments, the amount of tuition payable, or the school he
5 ~~or she~~ the person may attend, may appeal to the State Board and its decision
6 shall be final.

7 (b) A school district shall not pay tuition under subsection (a) of this
8 section to a school or program identified in that subsection, regardless of
9 religious status or affiliation, unless it receives a certification from that school
10 or program that:

11 (1) none of the tuition for which payment is requested has been or will
12 be used to support religious instruction or worship or the propagation of
13 religious views; and

14 (2) the school or program has adopted and implemented policies and
15 procedures to comply with all federal and State antidiscrimination laws
16 applicable to public schools and makes reasonable efforts to enforce these
17 policies and procedures.

18 (c)(1) The certification requirement under subsection (b) of this section
19 shall not:

20 (A) apply to public schools that receive tuition from another school
21 district,

1 ~~(B) require a school or program to comply with antidiscrimination~~
2 ~~laws from which it is exempt from compliance under 21 V.S.A. 495(e); or~~

3 ~~(C) prohibit the use of public tuition for instruction designed to~~
4 ~~provide an overview of religious history and teachings, provided that the~~
5 ~~instruction is not designed to, and does not, support religious instruction or~~
6 ~~worship or the propagation of any one religion or theology over others.~~

7 ~~(2) The certification required under subsection (b) of this section may~~
8 ~~be modified to take into account the exceptions in this subsection to the extent~~
9 ~~they apply.~~

10 ~~(d)(1) A school district that is requested to pay tuition under subsection (a)~~
11 ~~of this section to a school or program identified in that subsection shall not~~
12 ~~make that payment if, in the reasonable belief of its school board, the school or~~
13 ~~program is not in compliance with the certification under subsection (b) of this~~
14 ~~section, even if it has received the required certification. The Agency of~~
15 ~~Education shall assist a school district in making this determination if~~
16 ~~requested by its school board. The decision of the school district may be~~
17 ~~appealed to the State Board of Education under subdivision 164(3) of this title,~~
18 ~~and the decision of the State Board of Education shall be final.~~

1 ~~Sec. 3-9 V.S.A. § 4502 is amended to read:~~

2 § 4502. PUBLIC ACCOMMODATIONS

3 * * *

4 (1)(1) Notwithstanding any other provision of law, a religious organization,
5 association, or society, or any nonprofit institution or organization operated,
6 supervised, or controlled by or in conjunction with a religious organization,
7 association, or society, shall not be required to provide services,
8 accommodations, advantages, facilities, goods, or privileges to an individual if
9 the request for such services, accommodations, advantages, facilities, goods, or
10 privileges is related to the solemnization of a marriage or celebration of a
11 marriage. Any refusal to provide services, accommodations, advantages,
12 facilities, goods, or privileges in accordance with this subsection shall not
13 create any civil claim or cause of action. This subsection shall not be
14 construed to limit a religious organization, association, or society, or any
15 nonprofit institution or organization operated, supervised, or controlled by or
16 in conjunction with a religious organization, from selectively providing
17 services, accommodations, advantages, facilities, goods, or privileges to some
18 individuals with respect to the solemnization or celebration of a marriage but
19 not to others.

20 (2) This subsection shall not be construed to permit a religious school
21 that receives public tuition funds to deny services, accommodations,

1 ~~advantages, facilities, goods, or privileges to individuals because of their~~
2 membership in one or more of the protected categories listed under subsection
3 (a) of this section, including sexual orientation and gender identity.

4 * * * Dual Enrollment * * *

5 Sec. 4. FINDINGS AND PURPOSE

6 (a) Under 16 V.T.A. § 944, certain Vermont resident high school students
7 are able, at State expense, to take up to two classes that count both for high
8 school and college credit.

9 (b) This benefit is available to public school students and approved
10 independent school students on public tuition. Students are eligible for this
11 benefit who attend an approved independent school, whether secular or with a
12 religious mission, using public tuition.

13 (c) Students are not eligible for this benefit who attend an approved
14 independent school, whether secular or with a religious mission, using private
15 tuition.

16 (d) The Compelled Support Clause of the Vermont Constitution, Chapter 1,
17 Article 3, as interpreted in *Chittenden Town v. Department of Education*,
18 38 A.2d 539 (Vt. 1999), permits a school district to pay public tuition to a
19 school with a religious mission if the school has adequate safeguards against
20 the use of such funds for religious worship or instruction or the propagation of
21 religious views. Therefore, under the Vermont Constitution, a school district

1 ~~may not deny the payment of public tuition to a school with a religious~~
2 ~~mission solely on the basis of its religious status, and the school is eligible for~~
3 ~~that payment if it has adequate safeguards against the use of such funds for~~
4 ~~religious worship or instruction or the propagation of religious views.~~

5 ~~(e) Likewise, under the Vermont Constitution, a school district may not~~
6 ~~deny participation in the dual enrollment program solely because the students~~
7 ~~attend a school with a religious mission. If the school has adequate safeguards~~
8 ~~as to the use of public funding, then the school is eligible for public tuition,~~
9 ~~and students who attend the school on public tuition would therefore be~~
10 ~~eligible to participate in the dual enrollment program.~~

11 ~~(f) The purpose of Sec. 5 of this act is to ensure that school districts do not~~
12 ~~deny participation in the dual enrollment program to students who attend a~~
13 ~~school with a religious mission based on the school's religious status.~~

14 Sec. 5. 16 V.S.A. § 944 is amended to read:

15 § 944. DUAL ENROLLMENT PROGRAM

16 (a) Program creation. There is created a statewide Dual Enrollment
17 Program to be a potential component of a student's flexible pathway. The
18 Program shall include college courses offered on the campus of an accredited
19 postsecondary institution and college courses offered by an accredited
20 postsecondary institution on the campus of a secondary school. The Program
21 ~~may include online college courses or components.~~

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~~(b) Students~~

~~(1) A Vermont resident who has completed grade 10 but has not received a high school diploma is eligible to participate in the Program if:~~

~~(A) the student:~~

~~(i) is enrolled in:~~

~~***~~

~~(III) an approved independent school in Vermont, including a school that is secular or has a religious mission, to which the student's district of residence pays publicly funded tuition on behalf of the student;~~

~~***~~

~~(k) Schools with a religious status. A school district shall not deny dual enrollment benefits under this section solely on the basis of a school's religious status.~~

~~*** Effective Date ***~~

~~Sec. 6. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

**** Provision of Publicly Funded Education in Vermont ****

Sec. 1. 16 V.S.A. § 820 is added to read:

§ 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN VERMONT

(a) Findings and purpose.

(1) The Vermont Constitution provides that "a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth." VT Const.

CH II, § 68. Interpreting this provision in *Brigham v. State*, 692 A.2d 384 (1997), the Vermont Supreme Court stated that “[t]he state may delegate to local towns and cities the authority to finance and administer the schools within their borders; it cannot, however, abdicate the basic responsibility for education by passing it on to local governments, which are themselves creations of the state.” *Id.* at 395.

(A) From this, it is evident that the State has a constitutional obligation to provide public education to its youth. Many Vermont school districts operate schools, but others do not. Vermont is a relatively sparsely populated and mountainous state that has made the operation of public schools unviable in certain regions of the State. Students who live in these regions do not have the choice of enrolling in a public school in their district; their only choice is to enroll in a public school operated by another school district or an independent school or to be homeschooled.

(B) Therefore, in order to fulfill its constitutional requirement to provide public education to its youth, the State permits school districts that do not operate schools (nonoperating school districts) to use public funds to send their resident youth to public schools operated by other school districts or to certain independent schools. In order for an independent school to be eligible to receive public tuition, this section requires these schools to:

(i) comply with all federal and State antidiscrimination laws applicable to Vermont public schools; and

(ii) not use public tuition to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views.

(2) Chapter 1, Article 3 of the Vermont Constitution, known as the “Compelled Support Clause,” provides that “no person ... can be compelled to support any place of worship ... contrary to the dictates of conscience ...”

(A) In *Chittenden Town v. Department of Education*, 38 A.2d 539 (Vt. 1999), the Vermont Supreme Court held that a school district may pay public tuition to a school with a religious mission under the Compelled Support Clause only if the school has adequate safeguards against the use of such funds for religious worship or instruction or the propagation of religious views.

(B) This section sets out adequate safeguards to ensure that public tuition is not used for religious instruction, religious indoctrination, religious worship, or the propagation of religious views.

(b) Conditions for eligibility of an approved independent school to receive public tuition. An approved independent school shall be eligible to receive public tuition only if all of the following conditions are met.

(1)(A) The school has adopted and implemented policies and procedures to comply with all federal and State antidiscrimination laws applicable to Vermont public schools and makes reasonable efforts to enforce these policies and procedures. Compliance with the requirements set forth in these antidiscrimination laws includes compliance with the Vermont Public Accommodations Act, 9 V.S.A. chapter 139, the Vermont Fair Employment Practices laws, 21 V.S.A. chapter 5, subchapter 6, and all other federal and State antidiscrimination laws that apply to public schools, to the same extent that these laws apply to public schools, even if those laws by their terms do not apply to the approved independent school.

(B) Notwithstanding 21 V.S.A. § 495(e) (Unlawful Employment Practice), which permits religious organizations, under limited circumstances, to discriminate on the basis of sexual orientation or gender identity with respect to matters of employment, approved independent schools eligible to receive public tuition shall not discriminate on the basis of sexual orientation or gender identity with respect to matters of employment.

(C) The school posts and maintains on its website in a prominent place its policy to comply with all antidiscrimination laws that apply to public schools.

(2) None of the public tuition will be used to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views, except for religious instruction that is designed to provide an overview of religious history and teachings and does not support religious instruction, religious indoctrination, religious worship, or the propagation of any one religion or theology over others. As used in this section, “indoctrination” means to instruct in a body of doctrine or principles.

(3) The school receives approval from the State Board of Education to receive public tuition. In order to receive State Board approval, the school shall, in addition to satisfying any conditions required by the State Board, enter into a contract with the State Board, signed by an authorized representative acting on behalf of the school’s governing body, agreeing to comply with the eligibility requirements under subdivisions (1)–(2) of this subsection (antidiscrimination; no use of funds for religious purposes).

(c) Process for payment and school selection.

(1) The State Board of Education shall maintain a list of approved independent schools eligible to receive public tuition on its website.

(2) A school district may only pay tuition to an approved independent school eligible to receive public tuition listed on the State Board’s website.

Payment of public tuition shall be made directly from the district to the school unless otherwise required by court order.

(d) Approved independent school eligible to receive public tuition. As used in this title, an “approved independent school eligible to receive public tuition” means an approved independent school that is eligible to receive public tuition under this section. An independent school meeting education quality standards under section 165 of this title or an approved independent school in Vermont functioning as an approved area career technical center under chapter 37 of this title that seeks to receive public tuition is required also to qualify as an approved independent school eligible to receive public tuition.

(e) No private right of action. No private right of action is created by this section against an approved independent school eligible to receive public tuition for noncompliance with subsection (b) of this section or noncompliance with the contract between the school and the State Board of Education required under that subsection. The State Board is authorized to use its powers under subdivision 166(b)(5) of this title to revoke, suspend, or impose conditions on the eligibility of an approved independent school to receive public tuition for noncompliance with these requirements. The State Board shall establish and maintain a process to receive, investigate, and resolve allegations of noncompliance with these requirements in a manner that provides due process for the person or persons making the allegation and the approved independent school against which the allegation is made.

Sec. 1a. 16 V.S.A. § 820 is amended to read:

§ 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN
VERMONT

(a) Findings and purpose.

(1) The Vermont Constitution provides that “a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.” VT Const. CH II, § 68. Interpreting this provision in *Brigham v. State*, 692 A.2d 384 (1997), the Vermont Supreme Court stated that “[t]he state may delegate to local towns and cities the authority to finance and administer the schools within their borders; it cannot, however, abdicate the basic responsibility for education by passing it on to local governments, which are themselves creations of the state.” *Id.* at 395.

* * *

(B) Therefore, in order to fulfill its constitutional requirement to provide public education to its youth, the State permits school districts that do not operate schools (nonoperating school districts) to use public funds to send

their resident youth to public schools operated by other school districts or to certain independent schools. In order for an independent school to be eligible to receive public tuition, this section requires these schools to:

(i) comply with all federal and State antidiscrimination laws applicable to Vermont public schools; and

(ii) not use public tuition to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views-; and

(iii) enroll any student with an individualized education program (IEP) who requires special education services and who is placed in the independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency (LEA) as required under section 2973 of this title.

* * *

(b) Conditions for eligibility of an approved independent school to receive public tuition. An approved independent school shall be eligible to receive public tuition only if all of the following conditions are met.

* * *

(3) The school enrolls any student with an individualized education program who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by LEA as required under section 2973 of this title.

(3)(4) The school receives approval from the State Board of Education to receive public tuition. In order to receive State Board approval, the school shall, in addition to satisfying any conditions required by the State Board, enter into a contract with the State Board, signed by an authorized representative acting on behalf of the school's governing body, agreeing to comply with the eligibility requirements under subdivisions (1)–(2)(3) of this subsection (antidiscrimination; no use of funds for religious purposes; enrollment of students on an IEP).

* * *

* * * Dual Enrollment * * *

Sec. 2. 16 V.S.A. § 944 is amended to read:

§ 944. DUAL ENROLLMENT PROGRAM

* * *

(b) Students.

(1) A Vermont resident who has completed grade 10 but has not received a high school diploma is eligible to participate in the Program if:

(A) ~~the student:~~

~~(i) is enrolled in:~~

~~(I) a Vermont public school, including a Vermont career technical center;~~

~~(II) a public school in another state or an approved independent school that is designated as the public secondary school for the student's district of residence; or~~

~~(III) an approved independent school in Vermont to which the student's district of residence pays publicly funded tuition on behalf of the student;~~

~~(ii) is assigned to a public school through the High School Completion Program; or~~

~~(iii) is a home study student; none of the payment to the accredited postsecondary institution will be used to support religious instruction, religious indoctrination as defined in section 820 of this title, religious worship, or the propagation of religious views, except for religious instruction that is designed to provide an overview of religious history and teachings and does not support religious instruction, religious indoctrination, religious worship, or the propagation of religious views of any one religion or theology over others; and~~

~~(B) the student is not enrolled in a recognized independent school or a school or program that is not recognized for attendance purposes under section 1121 of this title;~~

~~(B)(C) dual enrollment is an element included within the student's personalized learning plan; and~~

~~(C)(D) the secondary school and the postsecondary institution have determined that the student is sufficiently prepared to succeed in a dual enrollment course, which can be determined in part by the assessment tool or tools identified by the participating postsecondary institution.~~

* * *

** * * Conforming Changes * * **

Sec. 3. 16 V.S.A. § 11 is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

(a) As used in this title, unless the context otherwise clearly requires:

** * **

(36) “Approved independent school eligible to receive public tuition” means an approved independent school that is also approved by the State Board of Education to receive public tuition under section 820 of this title.

Sec. 4. 16 V.S.A. § 165 is amended to read:

§ 165. EDUCATION QUALITY STANDARDS; EQUAL EDUCATIONAL OPPORTUNITIES; INDEPENDENT SCHOOL MEETING EDUCATION QUALITY STANDARDS

** * **

(b) Annually, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, ~~he or she~~ the Secretary shall describe in writing actions that a district must take in order to meet either or both sets of standards and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient progress within two years of the determination, the Secretary shall recommend to the State Board one or more of the following actions:

** * **

(4) the State Board close an individual school or schools and require that the school district pay tuition to another public school or an approved independent school ~~pursuant to chapter 21 of this title~~ eligible to receive public tuition; or

** * **

Sec. 5. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

** * **

~~(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency; provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation. Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions required by law.~~

* * *

Sec. 6. 16 V.S.A. § 821 is amended to read:

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY
SCHOOLS OR PAY TUITION

* * *

~~(d) Notwithstanding subdivision (a)(1) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary student at an approved independent elementary school eligible to receive public tuition or an independent school meeting education quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the student's parent or legal guardian before April 15 for the next academic year.~~

Sec. 7. 16 V.S.A. § 822 is amended to read:

*§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
PAY TUITION*

(a) Each school district shall maintain one or more approved high schools in which high school education is provided for its resident students unless:

(1) the electorate authorizes the school board to close an existing high school and to provide for the high school education of its students by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the parents or guardians of the student, within or outside the State in accordance with sections 824 and 828 of this title; or

** * **

(c)(1) A school district may both maintain a high school and furnish high school education by paying tuition:

** * **

(B) to an approved independent school eligible to receive public tuition or an independent school meeting education quality standards if the school board judges that a student has unique educational needs that cannot be served within the district or at a nearby public school.

** * **

Sec. 8. 16 V.S.A. § 823 is amended to read:

§ 823. ELEMENTARY TUITION

** * **

(b) Unless the electorate of a school district authorizes payment of a higher amount at an annual or special meeting warned for the purpose, the tuition paid to an approved independent elementary school eligible to receive public tuition or an independent school meeting education quality standards shall not exceed the least of:

** * **

Sec. 9. 16 V.S.A. § 824 is amended to read:

§ 824. HIGH SCHOOL TUITION

** * **

(c) The district shall pay an amount not to exceed the average announced tuition of Vermont union high schools for the year of attendance for its students enrolled in an approved independent school eligible to receive public tuition

that does not ~~functioning~~ function as a Vermont area career technical center; or any higher amount approved by the electorate at an annual or special meeting warned for that purpose.

Sec. 10. 16 V.S.A. § 827 is amended to read:

*§ 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN
APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC
HIGH SCHOOL OF A SCHOOL DISTRICT*

(a) A school district not maintaining an approved public high school may vote on such terms or conditions as it deems appropriate, to designate three or fewer approved independent schools eligible to receive public tuition or public high schools as the public high school or schools of the district.

** * **

(c) A parent or legal guardian who is dissatisfied with the instruction provided at a designated school or who cannot obtain for ~~his or her~~ the parent's or legal guardian's child the kind of course or instruction desired there, or whose child can be better accommodated in an approved independent school eligible to receive public tuition or public high school nearer ~~his or her~~ the child's home during the next academic year, may request on or before April 15 that the school board pay tuition to another approved independent school eligible to receive public tuition or public high school selected by the parent or guardian.

** * **

(e) Notwithstanding any other provision of law to the contrary:

** * **

(2) unless otherwise directed by an affirmative vote of the school district, when the Wells Board approves parental requests to pay tuition to a nondesignated approved independent school eligible to receive public tuition or public school, the Board shall pay tuition in an amount not to exceed the base education amount as determined under section 4011 of this title for the fiscal year in which tuition is being paid; and

(3) unless otherwise directed by an affirmative vote of the school district, when the Strafford Board approves a parental request to pay tuition to a nondesignated approved independent school eligible to receive public tuition or public school, the Board shall pay tuition to the nondesignated school pursuant to section 824 of this title for the year in which the student is enrolled; provided, however, that it shall not pay tuition in an amount that exceeds the tuition paid to the designated school for the same academic year.

Sec. 11. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

(a) A school district shall not pay the tuition of a student except to a public school, an approved independent school eligible to receive public tuition, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or, subject to subsection (b) of this section, an independent school in another state or country approved under the laws of that state or country; ~~nor shall payment.~~ Payment of tuition on behalf of a person shall not be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school ~~he or she~~ the person may attend; may appeal to the State Board, and its decision shall be final.

(b) An independent school in another state or country that is approved under the laws of that state or country is eligible to receive public tuition if all of the following conditions are met:

(1) It is located in a state that borders Vermont or in the Quebec Province of Canada, provided that an independent school that is not located in a state that borders Vermont or in the Quebec Province of Canada shall be eligible to receive public tuition if:

(A) the student is on an individual education program (IEP) and is placed at the school in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, as amended;

(B) the student is on a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended (504 Plan); or

(C) the student is determined to be disabled by the evaluation planning team or local education agency representative under State Board of Education rules.

(2)(A) The independent school has adopted and implemented policies and procedures to comply with all antidiscrimination laws applicable to public schools in the state or country where the independent school is located and makes reasonable efforts to enforce these policies and procedures. Compliance with the requirements set forth in these antidiscrimination laws includes compliance with antidiscrimination laws to the same extent as these laws apply to public schools, even if those laws by their terms do not apply to the independent school.

(B) The independent school posts and maintains on its website in a prominent place its policy to comply with all antidiscrimination laws that apply to public schools in the state or country where the independent school is located.

(3) None of the public tuition will be used to support religious instruction, religious indoctrination (as defined in section 820 of this title), religious worship, or the propagation of religious views, except for religious instruction that is designed to provide an overview of religious history and teachings and does not support religious instruction, religious indoctrination, religious worship, or the propagation of religious views of any one religion or theology over others.

(4) The independent school enters into a contract with the Vermont State Board of Education, signed by an authorized representative acting on behalf of the school's governing body, agreeing to comply with the eligibility requirements under subdivisions (2)–(3) of this subsection (antidiscrimination; no use of funds for religious purposes).

Sec. 12. 16 V.S.A. § 1073 is amended to read:

§ 1073. “LEGAL PUPIL” DEFINED; ACCESS TO SCHOOL

* * *

(b) Access to school.

* * *

(2) Right to enroll in a public or independent school. Notwithstanding the provisions of sections 822 and 1075 of this title, a pregnant or parenting student may enroll in any approved public school in Vermont or an adjacent state, any approved independent school eligible to receive public tuition in Vermont, or any other educational program approved by the State Board in which any other legal pupil in Vermont may enroll.

* * *

Sec. 13. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

* * *

(e) Under section 2973 of this title, a supervisory union, in its role as the local education agency, may place a student with an individualized education program under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, with ~~certain~~ approved independent schools ~~that accept public tuition~~ eligible to receive public tuition. If the approved independent school is

entitled to special education cost reimbursement under that section, it may bill the supervisory union for excess special education costs incurred by the independent school in providing special education services to that student beyond those covered by general tuition. If those costs for that student exceed the extraordinary expenditures threshold as defined in subdivision (a)(2) of this section, the supervisory union shall be entitled to extraordinary reimbursement.

Sec. 14. 16 V.S.A. § 2973 is amended to read:

§ 2973. INDEPENDENT SCHOOL TUITION RATES

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school ~~that accepts~~ eligible to receive public tuition shall enroll any student with an individualized education program who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency (LEA); provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school.

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** * * Development of Standard Contract * * **

Sec. 15. DEVELOPMENT OF STANDARD CONTRACT

(a) On or before August 1, 2022, the State Board of Education shall create and post on its website a standard form contract for use by approved independent schools eligible to receive public tuition that complies with the requirements of 16 V.S.A. § 820(b)(3) (antidiscrimination; no use of funds for religious purposes; enrollment of students on an individualized education program). The contract shall contain each of the following provisions:

(1) The State Board's authorization for the school to receive public tuition is conditioned on continued compliance by the school of this contract as well as any other conditions required by law or State Board rules.

(2)(A) The school has adopted and implemented policies and procedures to comply with all federal and State antidiscrimination laws applicable to Vermont public schools and makes reasonable efforts to enforce these policies and procedures. Compliance with the requirements set forth in these antidiscrimination laws includes compliance with the Vermont Public Accommodations Act, 9 V.S.A. chapter 139, the Vermont Fair Employment

Practices laws, 21 V.S.A. chapter 5, subchapter 6, and all other federal and State antidiscrimination laws that apply to public schools to the same extent that these laws apply to public schools, even if those laws by their terms do not apply to the school.

(B) Notwithstanding subsection (e) of 21 V.S.A. § 495 (Unlawful Employment Practice), which permits religious organizations, under limited circumstances, to discriminate on the basis of sexual orientation or gender identity with respect to matters of employment, the school shall not discriminate on the basis of sexual orientation or gender identity with respect to matters of employment.

(C) The school has posted and shall maintain on its website in a prominent place its policy to comply with all antidiscrimination laws that apply to public schools.

(3) None of the public tuition will be used by the school to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views, except for religious instruction that is designed to provide an overview of religious history and teachings and does not support religious instruction, religious indoctrination, religious worship, or the propagation of any one religion or theology over others. As used in this contract, “indoctrination” means to instruct in a body of doctrine or principles.

(4) Commencing with the 2023–2024 school year and thereafter, the school shall enroll any student with an individualized education program who requires special education services and who is placed in the school as an appropriate placement and least restrictive environment for the student by the student’s individualized education program team or by the local education agency as required under 16 V.S.A. § 2973.

(b) On or before August 1, 2022, the State Board of Education shall create and post on its website a standard form contract for use by independent schools in another state or country that complies with the requirements of 16 V.S.A. § 828(b) (antidiscrimination; no use of funds for religious purposes). The contract shall contain each of the following provisions:

(1) The State Board’s authorization for the school to receive public tuition is conditioned on continued compliance by the school of this contract.

(2)(A) The independent school has adopted and implemented policies and procedures to comply with all antidiscrimination laws applicable to public schools in the state or country where the independent school is located and makes reasonable efforts to enforce these policies and procedures. Compliance with the requirements set forth in these antidiscrimination laws

includes compliance with antidiscrimination laws to the same extent as these laws apply to public schools, even if those laws by their terms do not apply to the independent school.

(B) The independent school posts and maintains on its website in a prominent place its policy to comply with all antidiscrimination laws that apply to public schools in the state or country where the independent school is located.

(3) None of the public tuition will be used to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views, except for religious instruction that is designed to provide an overview of religious history and teachings and does not support religious instruction, religious indoctrination, religious worship, or the propagation of religious views of any one religion or theology over others. As used in this contract, "indoctrination" means to instruct in a body of doctrine or principles.

(c) A contract signed on behalf of the State Board and a school under 16 V.S.A. § 820(b)(3) or 828(b) shall contain no other conditions or requirements than those required under this section. The State Board and the school shall amend the contract as necessary to comply with applicable law, and the State Board shall amend its model contracts accordingly.

* * * Transition * * *

Sec. 16. TRANSITION

(a) A student enrolled for the 2021–2022 school year in, or has been accepted for enrollment for the 2022–2023 school year by, an independent school in another state or country that would not be eligible to receive public tuition under 16 V.S.A. § 828 as amended by this act shall continue to be entitled to public tuition until such time as the student graduates from that school. The school shall not be required to enter into the contract with the Vermont State Board of Education under 16 V.S.A. § 828 as amended by this act.

(b) Notwithstanding the provisions of this act, an approved independent school or out-of-state independent school that enrolled a student on public tuition for the 2021–2022 school year shall be entitled to that tuition payment for that school year, and school districts are authorized to make that payment or reimburse a parent or guardian who made that payment to the school.

** * * Effective Dates * * **

Sec. 17. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 1a (16 V.S.A. § 820), 5 (16 V.S.A. § 166), 13 (16 V.S.A. § 2962), and 14 (16 V.S.A. § 2973) shall take effect on July 1, 2023.