

S.219 as passed by the Senate; Section-by-Section

All sections take effect on passage except as indicated

Prepared by Jim Des Marais; March 30, 2022

* * * 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.

- The State has a constitutional obligation to provide public education to its youth. Students who live in nonoperating school districts 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.
- In order to fulfill its constitutional requirement to these students, the section permits the use of public funds for tuition at independent schools if these schools:
 - comply with all federal and State antidiscrimination laws applicable to Vermont public schools; and
 - do use public tuition to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views.
- Under the Vermont Constitution, a school district may pay public tuition to a school with a religious mission only if the school has adequate safeguards against the use of such funds for religious worship or instruction or the propagation of religious views. 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.

- Compliance with all federal and State antidiscrimination laws applicable to Vermont public schools, including 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.

- 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.
- The school must post and maintain on its website in a prominent place its policy to comply with all antidiscrimination laws that apply to public schools.
- 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.
- 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 (antidiscrimination; no use of funds for religious purposes).

(c) Process for payment and school selection.

- The State Board of Education shall maintain a list of approved independent schools eligible to receive public tuition on its website.
- 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 16 V.S.A. § 165 or an approved independent school in Vermont functioning as an approved area career

technical center under 16 V.S.A. chapter 37 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.
- The State Board is authorized to use its powers 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: [effective July 1, 2023]

§ 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN VERMONT

- Adds third condition to 16 V.S.A. § 820 for approved independent schools to be eligible to receive public tuition (in addition to the nondiscrimination and no use for religious instruction conditions).
- This third condition was enacted in Act 173 (2018), which takes effect on July 1, 2023.
- For an approved independent schools to be eligible to receive public tuition, it must 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 16 V.S.A. § 2973.

* * * Dual Enrollment * * *

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

§ 944. DUAL ENROLLMENT PROGRAM

- Changes eligibility for dual enrollment from whether the student is on publicly funded tuition to allow all Vermont residents who have completed grade 10 but have not received a high school diploma to participate in the program, provided none of the State payment to the accredited postsecondary institution will be used to support religious

instruction, religious indoctrination, religious worship, or the propagation of religious views.

- Dual enrollment is not available to a student enrolled in a recognized independent school or a school or program that is not recognized for attendance purposes.

* * * Conforming Changes * * *

Secs. 3–10 make conforming changes to properly use the term “approved independent school eligible to receive public tuition” and to delete text that was moved to other sections. [Sec. 5 takes effect on July 1, 2023]

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

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

- Provides that 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:
 - 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:
 - the student is on an individual education program (IEP) and is placed at the school in accordance with federal law;
 - the student is on a Section 504 plan; or
 - the student is disabled.
- The independent school complies with all antidiscrimination laws applicable to public schools in the state or country where the independent school is located and posts this commitment on its website.
- None of the public tuition will be used to support religious instruction, religious indoctrination, religious worship, or the propagation of religious views.
- The independent school enters into a contract with the State Board of Education agreeing to comply with these eligibility requirements.

Sec. 12–14. Make conforming changes to properly use the term “approved independent school eligible to receive public tuition.” [Secs. 13 and 14 take effect on July 1, 2023]

* * * Development of Standard Contract * * *

Sec. 15. DEVELOPMENT OF STANDARD CONTRACT

- Requires the State Board of Education to create and post on its website standard form contracts for use by approved independent schools and out-of-state independent schools to be eligible to receive public tuition, under which they agree to comply with the antidiscrimination, no use of funds for religious purposes, and enrollment of students on an individualized education program conditions (this third condition does not apply to out-of-state schools).

* * * Transition * * *

Sec. 16. TRANSITION

- Allows a student enrolled for the 2021–2022 school year in, or who has been accepted for enrollment for the 2022–2023 school year by, an independent school in another state or country that is not located in a bordering state or the Province of Quebec to continue to be entitled to public tuition until such time as the student graduates from that school.
- Allows an approved independent school or out-of-state independent school that enrolled a student on public tuition for the 2021–2022 school year to receive public tuition for that school year.

* * * Effective Dates * * *

Sec. 17. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 1a (16 V.S.A. § 820), 4 (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.

After passage, the title of the bill will be amended to read: “An act relating to ensuring compliance with the U.S. and Vermont Constitutions in the use of public funds for tuition”