

To: Vermont House Committee on Education
From: Harrison Stark, Staff Attorney, ACLU of Vermont
Re: S.219 – Policy Considerations Regarding Anti-Discrimination Protections for Students
Date: 4/19/2022



Thank you for the invitation to submit further views on S.219 and anti-discrimination protections for students. To date, the American Civil Liberties Union of Vermont has addressed S.219 mostly from a legal perspective, emphasizing the constitutional landscape surrounding its various provisions. As explained in our April 5 testimony, we urged the Committee to wait to enact any statute addressing religious instruction until the U.S. Supreme Court decides *Carson v. Makin*, a First Amendment challenge to Maine’s student-aid program. But in contrast, as we confirmed in writing on April 8, S.219’s anti-discrimination provisions protecting students raise no constitutional questions or concerns.

PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director

Several have asked us to supplement that earlier legal analysis with an explicit policy perspective on S.219’s anti-discrimination provisions addressing students. As a matter of policy, we support any and all reforms that bolster the Vermont Public Accommodations Act (VPAA), 9 V.S.A. § 4502 *et seq.*, in the educational context, and therefore see any mechanism—statutory or regulatory—requiring schools receiving public tuition to confirm that they will comply with existing legal obligations as common-sense—and hopefully uncontroversial.

But we want to be clear that significantly more can—and must—be done to protect Vermont’s students from discrimination. Regardless of how the Committee proceeds on S.219 or the Series 2200 Rules in the coming days and weeks, we therefore highly encourage the General Assembly to return to this issue with a wider lens next session.

The VPAA currently prohibits “any school” from discriminating based on race, gender, sexual orientation, disability, or other protected characteristics. *Id.* § 4501(1). Despite that clear mandate, numerous schools—both public and independent—remain toxic and exclusionary environments for many students. The ACLU of Vermont has seen recent evidence of racial abuse firsthand through its litigation to enforce the VPAA’s mandate in schools, but students, families, educators, and organizers have been mobilizing around discriminatory educational barriers for decades. And their message has been clear: even though discrimination is technically illegal, myriad Vermont students remain excluded from the state’s promise of equal educational opportunity, simply for being who they are.

Accordingly, the ACLU of Vermont views certifications or affirmations like S.219’s as a straightforward step, but we believe that these provisions need to represent merely one part of a broader and more robust apparatus for protecting students. Indeed, as described above, many schools already profess to follow the law on paper, but still operate exclusionary institutions in practice. Adequately tackling discrimination in schools will therefore require a larger exploration with

this Committee, and the legislature more broadly, about how and why the current landscape is failing, and what additional tools are needed to ensure that students of all backgrounds and identities succeed in Vermont's schools. And while legal advocacy groups like the ACLU will likely have helpful perspectives to contribute, that broader conversation around discrimination and harassment must center the voices and needs of those directly affected, and must draw on the deep experience of grassroots advocates who have long fought for students experiencing discrimination. Several of our coalition partners, for example, have been working on this issue for over a generation; their views are essential.

To that end, regardless of how the Committee proceeds in the coming days and weeks, we would highly encourage the General Assembly to return to this issue with a wider lens next session. Proposed solutions must grow out of the needs of those impacted, but some of the potential paths the legislature could consider on a longer timeline include: adding further language to the VPAA to eliminate any question as to its scope; enacting additional mechanisms to better enforce existing protections; expanding training for educators and administrators to inculcate cultures of genuine belonging; and broadening relief and resources for victims of discrimination. More solutions will emerge as the General Assembly explores this issue in greater depth, and the ACLU looks forward to being part of that conversation alongside its coalition partners.

Thank you for your continued interest in the ACLU's views on this important issue. We look forward to working together further to ensure Vermont's promise of equal educational opportunity remains fully accessible to all.

Sincerely,



Harrison Stark
Staff Attorney
ACLU of Vermont



PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director