

1 Introduced by Senator Campion

2 Referred to Committee on

3 Date:

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

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

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

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 (Vt.  
8 1999), the Vermont Supreme Court held that a school district may pay public  
9 tuition to a school with a religious mission under the Compelled Support  
10 Clause if the school has adequate safeguards against the use of such funds for  
11 religious worship or instruction or the propagation of religious views.

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

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

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

17 (a) A school district shall not pay the tuition of a student except to a public  
18 school, an approved independent school, an independent school meeting  
19 education quality standards, a tutorial program approved by the State Board, an  
20 approved education program, or an independent school in another state or  
21 country approved under the laws of that state or country, nor shall payment of

1 tuition on behalf of a person be denied on account of age. Unless otherwise  
2 provided, a person who is aggrieved by a decision of a school board relating to  
3 eligibility for tuition payments, the amount of tuition payable, or the school ~~he~~  
4 ~~or she~~ the person may attend, may appeal to the State Board and its decision  
5 shall be final.

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

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

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

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

19 (A) apply to public schools that receive tuition from another school  
20 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 be  
8 modified to take into account the exceptions in this subsection (c) 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 section 164(c) of this title, and  
18 the decision of the State Board of Education shall be final.

19          Sec. 3. 9 VSA Section 4502 is amended to read:

20          § 4502. PUBLIC ACCOMMODATIONS

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

17       (B) This subsection shall not be construed to permit a religious  
18       school that receives public tuition funds to deny services, accommodations,  
19       advantages, facilities, goods or privileges to individuals because of their  
20       membership in one or more of the protected categories listed under subsection  
21       (a) of this section including sexual orientation and gender identity.

\* \* \* Dual Enrollment \* \* \*

2 Sec. 4. FINDINGS AND PURPOSE

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

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

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

13 (d) A group of students attending Rice Memorial High School, a school  
14 with a religious mission, sued the Agency of Education asserting that denial of  
15 dual enrollment to Rice students was due to the religious status of the school in  
16 violation of the Free Exercise Clause of the First Amendment to the U.S.  
17 Constitution. *A.H. v. French, Case No. 20-1772, Second Circuit Court of*  
18 *Appeals, January 15, 2021.*

19 (e) The Court found that the school district that was responsible for  
20 determining whether the Rice students were eligible for dual enrollment  
21 informed the students that they were not entitled to this benefit because “Rice

1 is a religious school.” The Court ruled that the Rice students had demonstrated  
2 a clear likelihood of success on the merits of their claim because denial was  
3 based on the religious status of the school, and ordered the Secretary of  
4 Education to permit the students to participate in the dual enrollment program  
5 pending final adjudication of the merits of the case.

6 (f) The Compelled Support Clause of the Vermont Constitution, Chapter 1,  
7 Article 3, as interpreted in *Chittenden Town v. Department of Education*, 38  
8 A.2d 539 (Vt. 1999), permits a school district to pay public tuition to a school  
9 with a religious mission if the school has adequate safeguards against the use  
10 of such funds for religious worship or instruction or the propagation of  
11 religious views. Therefore, under the Vermont Constitution, a school district  
12 may not deny the payment of public tuition to a school with a religious mission  
13 solely on the basis of its religious status, and the school is eligible for that  
14 payment if it has adequate safeguards against the use of such funds for  
15 religious worship or instruction or the propagation of religious views.

16 (g) Likewise, under the Vermont Constitution, a school district may not  
17 deny participation in the dual enrollment program solely because the students  
18 attend a school with a religious mission. If the school has adequate safeguards  
19 as to the use of public funding, then the school is eligible for public tuition, and

1 students who attend the school on public tuition would therefore be eligible to  
2 participate in the dual enrollment program.

3 (h) The purpose of Sec. 5 of this act is to ensure that school districts do not  
4 deny participation in the dual enrollment program to students who attend a  
5 school with a religious mission based on the school’s religious status.

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

7 § 944. DUAL ENROLLMENT PROGRAM

8 (a) Program creation. There is created a statewide Dual Enrollment Program  
9 to be a potential component of a student’s flexible pathway. The Program shall  
10 include college courses offered on the campus of an accredited postsecondary  
11 institution and college courses offered by an accredited postsecondary  
12 institution on the campus of a secondary school. The Program may include  
13 online college courses or components.

14 (b) Students.

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

17 (A) the student:

18 (i) is enrolled in:

19 \* \* \*



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

4 \* \* \*

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

8 \* \* \* Effective date \* \* \*

9 Sec. 6. EFFECTIVE DATE

10 This act shall take effect on passage.