

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 all**
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 any of the schools or programs identified in that subsection,
8 regardless of religious status or affiliation, unless it receives certification from
9 that school or program under subsection (d) of this section, provided that
10 public schools that receive tuition from a school district are exempt from this
11 requirement. Instruction in religion that focuses on the history and teachings
12 of various religions shall not be deemed to support religious instruction or
13 worship or the propagation of religious views, provided that the instruction is
14 not designed to, and does not, support religious instruction or worship or the
15 propagation of any one religion or theology or group of related religions or
16 theologies.

17 (c) A school district shall not pay tuition under subsection (a) of this
18 section to any of the schools or programs identified in that subsection,
19 regardless of religious status or affiliation, unless the school or program
20 complies with all federal and State antidiscrimination laws applicable to public
21 schools.

1 (d) In order for a school or program identified in subsection (a) of this
2 section to receive public tuition from a school district, it shall certify to the
3 school district that none of the tuition for which payment is requested has been
4 or will be used to support religious instruction or worship or the propagation of
5 religious views and that the school or program complies with all federal and
6 State antidiscrimination laws applicable to public schools. This certification
7 requirement shall not apply to public schools.

8 * * * Dual Enrollment * * *

9 Sec. 3. FINDINGS AND PURPOSE

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

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

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

20 (d) A group of students attending Rice Memorial High School, a school
21 with a religious mission, sued the Agency of Education asserting that denial of

1 dual enrollment to Rice students was due to the religious status of the school in
2 violation of the Free Exercise Clause of the First Amendment to the U.S.
3 Constitution. *A.H. v. French, Case No. 20-1772, Second Circuit Court of*
4 *Appeals, January 15, 2021.*

5 (e) The Court found that the school district that was responsible for
6 determining whether the Rice students were eligible for dual enrollment
7 informed the students that they were not entitled to this benefit because “Rice
8 is a religious school.” The Court ruled that the Rice students had demonstrated
9 a clear likelihood of success on the merits of their claim because denial was
10 based on the religious status of the school, and ordered the Secretary of
11 Education to permit the students to participate in the dual enrollment program
12 pending final adjudication of the merits of the case.

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

1 payment if it has adequate safeguards against the use of such funds for
2 religious worship or instruction or the propagation of religious views.

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

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

12 Sec. 4. 16 V.S.A. § 944 is amended to read:

13 § 944. DUAL ENROLLMENT PROGRAM

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

20 (b) Students.

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

3 (A) the student:

4 (i) is enrolled in:

5 * * *

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

9 * * *

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

13 * * * Effective date * * *

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on passage.