

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 219
3 entitled “An act relating to ensuring compliance with the U.S. and Vermont
4 Constitutions in the use of public funds for tuition and in the dual enrollment
5 program” respectfully reports that it has considered the same and recommends
6 that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

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

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

10 § 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN

11 VERMONT

12 (a) Findings and purpose.

13 (1) The Vermont Constitution provides that “a competent number of
14 schools ought to be maintained in each town unless the general assembly
15 permits other provisions for the convenient instruction of youth.” VT Const.
16 CH II, § 68. Interpreting this provision in *Brigham v. State*, 692 A.2d 384
17 (1997), the Vermont Supreme Court stated that “[t]he state may delegate to
18 local towns and cities the authority to finance and administer the schools
19 within their borders; it cannot, however, abdicate the basic responsibility for
20 education by passing it on to local governments, which are themselves
21 creations of the state.” *Id.* at 395.

1 (A) From this, it is evident that the State has a constitutional
2 obligation to provide public education to its youth. Many Vermont school
3 districts operate schools, but others do not. Vermont is a relatively sparsely
4 populated and mountainous State that has made the operation of public schools
5 unviable in certain parts of the State. Therefore, in order to fulfill its
6 constitutional requirement to provide public education to its youth, the State
7 permits school districts that do not operate schools (nonoperating school
8 districts) to use public funds to send their resident youth to public schools
9 operated by other school districts or to approved independent schools.

10 (B) Approved independent schools that enroll publicly funded
11 students serve a public function in that they are a means of fulfilling the State’s
12 constitutional obligation to provide these students with a public education.
13 Therefore, in order to be eligible to receive public tuition, this section requires
14 these schools to operate in a manner that is consistent with providing a public
15 education by:

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

18 (ii) not using public tuition to support religious instruction or
19 worship or the propagation of religious views.

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

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

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

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

15 (1)(A) The school has adopted and implemented policies and procedures
16 to comply with all federal and State antidiscrimination laws applicable to
17 Vermont public schools and makes reasonable efforts to enforce these policies
18 and procedures. Compliance with these antidiscrimination laws includes
19 compliance with the Vermont Public Accommodations Act, 9 V.S.A. chapter
20 141, and the Vermont Fair Employment Practices laws, 21 V.S.A. chapter 5,

1 subchapter 6 to the same extent as these laws apply to public schools, even if
2 those laws by their terms do not apply to the school.

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

5 (2) None of the public tuition will be used to support religious
6 instruction or worship or the propagation of religious views, except for
7 religious instruction that is designed to provide an overview of religious
8 history and teachings and does not support religious instruction or worship or
9 the propagation of any one religion or theology over others.

10 (3) The school receives approval from the State Board of Education to
11 receive public tuition. In order to receive State Board approval, the school
12 shall, in addition to satisfying any conditions required by the State Board,
13 provide a certification to the State Board, signed by the headmaster of the
14 school acting on behalf of the school's governing body, that it complies with
15 the eligibility requirements under subdivisions (1)–(2) of this subsection (b)
16 (antidiscrimination; no use of funds for religious purposes).

17 (c) Process for payment and school selection.

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

20 (2) A school district may only pay tuition to an approved independent
21 school eligible to receive public tuition listed on the Agency's website.

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

3 (3) The school board of a nonoperating school district, in consultation
4 with the student and the student’s parent or guardian, shall determine which
5 approved independent school eligible to receive public tuition the student shall
6 attend. In making its decision, the school board shall take into consideration
7 whatever factors it deems relevant, including the preferences of the student and
8 the student’s parent or guardian, the student’s educational needs and
9 extracurricular interests, the school’s ability to serve the student, and the travel
10 route and distance to the school. The school board’s determination shall be
11 final.

12 (d) Definition. As used in this title, an approved independent school that is
13 eligible to receive public tuition under this section shall be referred to as an
14 “approved independent school eligible to receive public tuition.” An
15 independent school meeting education quality standards under section 165 of
16 this title or an approved independent school in Vermont functioning as an
17 approved area career technical center under chapter 37 of this title that seeks to
18 receive public tuition is required also to qualify as an approved independent
19 school eligible to receive public tuition.

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

21 § 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN

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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) Approved independent schools that enroll publicly funded students serve a public function in that they are a means of fulfilling the State’s constitutional obligation to provide these students with a public education. Therefore, in order to be eligible to receive public tuition, this section requires these schools to operate in a manner that is consistent with providing a public education by:

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

1 (ii) not using public tuition to support religious instruction or
2 worship or the propagation of religious views; and

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

9 * * *

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

13 (1)(A) The school has adopted and implemented policies and procedures
14 to comply with all federal and State antidiscrimination laws applicable to
15 Vermont public schools and makes reasonable efforts to enforce these policies
16 and procedures. Compliance with these antidiscrimination laws includes
17 compliance with the Vermont Public Accommodations Act, 9 V.S.A. chapter
18 141, and the Vermont Fair Employment Practices laws, 21 V.S.A. chapter 5,
19 subchapter 6 to the same extent as these laws apply to public schools, even if
20 those laws by their terms do not apply to the school.

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

3 (2) None of the public tuition will be used to support religious
4 instruction or worship or the propagation of religious views, except for
5 religious instruction that is designed to provide an overview of religious
6 history and teachings and does not support religious instruction or worship or
7 the propagation of any one religion or theology over others.

8 (3) The school enrolls any student with an individualized education
9 program who requires special education services and who is placed in the
10 approved independent school as an appropriate placement and least restrictive
11 environment for the student by the student’s individualized education program
12 team or by LEA as required under section 2973 of this title. This condition
13 only applies if the school is eligible for and receives public tuition.

14 ~~(3)~~(4) The school receives approval from the State Board of Education to
15 receive public tuition. In order to receive State Board approval, the school
16 shall, in addition to satisfying any conditions required by the State Board,
17 provide a certification to the State Board, signed by the headmaster of the
18 school acting on behalf of the school’s governing body, that it complies with
19 the eligibility requirements under subdivisions (1)–~~(2)~~(3) of this subsection (b)
20 (antidiscrimination; no use of funds for religious purposes; enrollment of
21 students on an IEP).

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* * * Unlawful Employment Practice * * *

Sec. 2. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

* * *

~~(e) The provisions of this section prohibiting discrimination on the basis of sexual orientation and gender identity shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment that is calculated by the organization to promote the religious principles for which it is established or maintained. [Repealed.]~~

* * *

* * * Dual Enrollment * * *

Sec. 3. 16 V.S.A. § 944 is amended to read:

§ 944. DUAL ENROLLMENT PROGRAM

* * *

1 (b) Students.

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

4 (A) the student:

5 * * *

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

8 (iii) is a home study student; or

9 (iv) is a resident of a nonoperating district enrolled in an approved
10 independent school eligible to receive public tuition;

11 * * *

12 * * * Conforming Changes * * *

13 Sec. 4. 16 V.S.A. § 11 is amended to read:

14 § 11. CLASSIFICATIONS AND DEFINITIONS

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

16 * * *

17 (20a) “Approved independent school eligible to receive public tuition”

18 means an approved independent school that is also approved by the State

19 Board of Education to receive public tuition under section 820 of this title.

20 * * *

1 Sec. 5. 16 V.S.A. § 165 is amended to read:

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

5 * * *

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

18 * * *

19 (4) the State Board close an individual school or schools and require that
20 the school district pay tuition to another public school or an approved

1 independent school ~~pursuant to chapter 21 of this title~~ eligible to receive public
2 tuition; or

3 * * *

4 Sec. 6. 16 V.S.A. § 166 is amended to read:

5 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

6 * * *

7 (b) Approved independent schools. On application, the State Board shall
8 approve an independent school that offers elementary or secondary education
9 if it finds, after opportunity for hearing, that the school provides a minimum
10 course of study pursuant to section 906 of this title and that it substantially
11 complies with all statutory requirements for approved independent schools and
12 the Board's rules for approved independent schools. ~~An independent school~~
13 ~~that intends to accept public tuition shall be approved by the State Board only~~
14 ~~on the condition that the school agrees, notwithstanding any provision of law~~
15 ~~to the contrary, to enroll any student who requires special education services~~
16 ~~and who is placed in or referred to the approved independent school as an~~
17 ~~appropriate placement and least restrictive environment for the student by the~~
18 ~~student's individualized education program team or by the local education~~
19 ~~agency; provided, however, that this requirement shall not apply to an~~
20 ~~independent school that limits enrollment to students who are on an~~
21 ~~individualized education program or a plan under Section 504 of the~~

1 ~~Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to~~
2 ~~a written agreement between the local education agency and the school.~~

3 Except as provided in subdivision (6) of this subsection, the Board’s rules must
4 at minimum require that the school have the resources required to meet its
5 stated objectives, including financial capacity, faculty who are qualified by
6 training and experience in the areas in which they are assigned, and physical
7 facilities and special services that are in accordance with any State or federal
8 law or regulation. Approval may be granted without State Board evaluation in
9 the case of any school accredited by a private, State, or regional agency
10 recognized by the State Board for accrediting purposes, provided that the State
11 Board shall determine that the school complies with all student enrollment
12 provisions required by law.

13 * * *

14 Sec. 7. 16 V.S.A. § 821 is amended to read:

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

17 * * *

18 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
19 school district that does not maintain an elementary school may grant general
20 authority to the school board to pay tuition for an elementary student at an
21 approved independent elementary school eligible to receive public tuition or an

1 independent school meeting education quality standards pursuant to sections
2 823 and 828 of this chapter upon notice given by the student's parent or legal
3 guardian before April 15 for the next academic year

4 Sec. 8. 16 V.S.A. § 822 is amended to read:

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

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

9 (1) the electorate authorizes the school board to close an existing high
10 school and to provide for the high school education of its students by paying
11 tuition to a public high school, an approved independent high school eligible to
12 receive public tuition, or an independent school meeting education quality
13 standards, to be selected by the parents or guardians of the student, within or
14 outside the State; or

15 * * *

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

18 * * *

19 (B) to an approved independent school eligible to receive public
20 tuition or an independent school meeting education quality standards if the

1 school board judges that a student has unique educational needs that cannot be
2 served within the district or at a nearby public school.

3 * * *

4 Sec. 9. 16 V.S.A. § 823 is amended to read:

5 § 823. ELEMENTARY TUITION

6 * * *

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

12 * * *

13 Sec. 10. 16 V.S.A. § 824 is amended to read:

14 § 824. HIGH SCHOOL TUITION

15 * * *

16 (c) The district shall pay an amount not to exceed the average announced
17 tuition of Vermont union high schools for the year of attendance for its
18 students enrolled in an approved independent school eligible to receive public
19 tuition that does not functioning function as a Vermont area career technical
20 center, or any higher amount approved by the electorate at an annual or special
21 meeting warned for that purpose.

1 Sec. 11. 16 V.S.A. § 827 is amended to read:

2 § 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN

3 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC

4 HIGH SCHOOL OF A SCHOOL DISTRICT

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

9 * * *

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

19 * * *

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

21 * * *

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

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

14 Sec. 12. 16 V.S.A. § 828 is amended to read:

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

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

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

5 Sec. 13. 16 V.S.A. § 1073 is amended to read:

6 § 1073. “LEGAL PUPIL” DEFINED; ACCESS TO SCHOOL

7 * * *

8 (b) Access to school.

9 * * *

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

16 * * *

17 Sec. 14. 16 V.S.A. § 2962 is amended to read:

18 § 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

19 * * *

20 (e) Under section 2973 of this title, a supervisory union, in its role as the
21 local education agency, may place a student with an individualized education

1 program under the Individuals with Disabilities Education Act, 20 U.S.C.
2 chapter 33, with ~~certain~~ approved independent schools ~~that accept public~~
3 ~~tuition~~ eligible to receive public tuition. If the approved independent school is
4 entitled to special education cost reimbursement under that section, it may bill
5 the supervisory union for excess special education costs incurred by the
6 independent school in providing special education services to that student
7 beyond those covered by general tuition. If those costs for that student exceed
8 the extraordinary expenditures threshold as defined in subdivision (a)(2) of this
9 section, the supervisory union shall be entitled to extraordinary reimbursement.

10 * * * Effective Dates * * *

11 Sec. 15. EFFECTIVE DATES

12 This act shall take effect on passage, except for and Secs. 1a, 6, and 14,
13 which shall take effect on July 1, 2023.

14 and that after passage the title of this bill be amended to read: “An act
15 relating to ensuring compliance with the U.S. and Vermont Constitutions in the
16 use of public funds for tuition”

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18
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20 (Committee vote: _____)

1

2

Senator _____

3

FOR THE COMMITTEE