

**S.219 v. 4.1**

**Senate Committee on Education**

Testimony by Jim Des Marais

**Decision Points**

**(1) Change the certification condition to a requirement for approved independent schools that seek public tuition to enter into a contract with the State Board. Under this contract, the school would agree to the same provisions in the certification and the SBE would agree that the school is eligible to receive public tuition so long as it continues to comply with these provisions, applicable law, and SBE rules.**

(A) Would create an explicit contract requirement instead of being implied through the certification process.

(B) Reflects Justice Barrett statement in *Makin* case:

“I gather, in drawing the distinction that Zelman drew between choice and direct funding, that you would concede that **if Maine retooled its program so that payments went directly to private schools** ... for students from districts that lack a public school, you're conceding, I take it, that in the case of that kind of direct subsidy, there would not be a problem with Maine not subsidizing a private religious school as well?... I'm just trying to press on how important to your argument **this severed link is where the money is going to the parents and then going to the school**, as opposed to we'll just pay you a flat rate.”

Counsel for the religious schools responded:

“I think, if the government's paying a flat rate to schools **that doesn't turn on whether a student is choosing to attend that school** ... that ... would be permissible in that situation for the state to say **we're not going ... to contract** with a school that's providing religious instruction.”

(C) The bill's narrative is that approved independent schools that enroll publicly funded students from non-operating districts 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. Having a contract between the State and these schools is consistent with this narrative. **Consider requiring out-of-state schools to contract as well or eliminate ability of students to use public tuition out-of-state.**

(i) The ability to use public tuition out-of-state may be viewed as inconsistent with the bill’s narrative because this degree of choice is unnecessary to fulfilling the State’s constitutional obligation to provide these students with a public education, which could be limited to Vermont schools.

(ii) Justice Barrett in the *Makin* case questioned the Maine public tuition program:

“this program functions like choice ... like a school choice program, particularly given that kids can go as far as California and to elite boarding schools all over the country with the money?”

## **(2) Use of the term “indoctrination”**

(A) The bill currently provides “None of the public tuition will be used to support religious instruction or 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 or worship or the propagation of any one religion or theology over others.”

(B) This language reflects the holding of the *Chittenden Town* case (the term “indoctrination” was not part of the holding).

(C) Consider substituting “indoctrination” for “instruction” or adding “indoctrination” to “instruction.”

(i) “None of the public tuition will be used to support religious indoctrination or worship or the propagation of religious views...”

(ii) “None of the public tuition will be used to support religious instruction, worship, or indoctrination, or the propagation of religious views...”

(D) From the Cambridge Dictionary, indoctrination means “the process of repeating an idea or belief to someone until they accept it without criticism or question.”

## **(3) Dual enrollment.**

(A) Current law:

(b) Students.

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

(A) the student:

(i) is enrolled in:

(I) a Vermont public school, including a Vermont career technical center;

(II) a public school in another state or an approved independent school that is designated as the public secondary school for the student's district of residence; or

(III) an approved independent school in Vermont to which the student's district of residence pays publicly funded tuition on behalf of the student;

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

(iii) is a home study student;

(B) Current bill:

(b) Students.

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

(A) the student:

(i) is enrolled in:

(I) a Vermont public school, including a Vermont career technical center;

(II) a public school in another state or an approved independent school that is designated as the public secondary school for the student's district of residence; or

(III) an approved independent school in Vermont to which the student's district of residence pays publicly funded tuition on behalf of the student;

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

(iii) is a home study student; ~~or~~

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

(C) Prof. Teachout concept:

(b) Students.

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

(A) none of the payment to the accredited postsecondary institution will be used to support religious instruction or 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 or worship or the propagation of any one religion or theology over others [tailor for “indoctrination” if that term is used earlier in the bill]; and

(B) the student is not enrolled in a recognized independent school or a school or program that is not recognized for attendance purposes under section 1121 of this title;