**VT Human Rights Commission**
14-16 Baldwin Street
Montpelier, VT 05633-6301
**http://hrc.vermont.gov**

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

**Bor Yang**
Executive Director and Legal Counsel
Direct line: (802) 828-2493
Bor.Yang@vermont.gov

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The Honorable Brian Campion, Chair
Senate Committee on Education
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: S.219, An act relating to ensuring compliance with the U.S. and Vermont Constitutions in the use of public funds for tuition and in the dual enrollment program.

Dear Chair Campion and Members of the Committee:

Thank you for inviting me to testify on S.219. My name is Bor Yang and I am the Executive Director of the Vermont Human Rights Commission (HRC or Commission). The HRC has jurisdiction to investigate complaints of discrimination in state government employment, housing, and places of public accommodation.

The Commission takes the position that the Vermont Public Accommodations Act (VPAA) was intended to cover all schools, including religious and independent schools. This is clear and unambiguous.

First, the plain reading of the statute defines places of public accommodations as "***any*** school, restaurant, store, establishment, or other facility, at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public." [emphases added]. 9 V.S.A. § 4501.

Second, a fundamental canon of statutory construction tells us that when one thing is specifically expressed in a statute, there is an inference that the Legislature intended to exclude others that are omitted from the statute. Here, the Legislature specifically carved out an exemption for religious organizations from having to provide "services, accommodations, advantages, facilities, goods or privileges to an individual if the request...is related to the solemnization of a marriage or celebration of marriage." Had the Legislature intended to exempt religious schools from the VPAA, it would have expressed it.

Lastly, Vermont's anti-discrimination laws are remedial in nature and as such, should be liberally construed to effectuate its purpose. In fact, Vermont has a much more expansive definition of places of public accommodations than its federal counter-part, even extending the definition to include all governmental entities such as the Department of Corrections which is arguably not open to the general public. *See In Department of Corrections v. Human Rights Commission*, 2006 VT 134, ¶3, 181 Vt. 225, 917 A.2d 451 (…the Legislature intended to make all governmental entities, in addition to all private entities offering services or benefits to the general public, subject to the Act's anti-discrimination provisions).

Some have argued that there is ambiguity in the definition of school in light of the legislative intent language found at 9 V.S.A. § 4500, which states:

> (a) The provisions of this chapter establishing legal standards, duties, and requirements ***with respect to persons with disabilities in places of public accommodation*** as defined in this chapter, except those provisions relating to remedies, are intended to implement and to be construed so as to be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and regulations promulgated under that act, and are not intended to impose additional or higher standards, duties, or requirements than that act. [emphasis added].

Because the ADA specifically exempts religious organizations and their related activities from coverage, some argue that the VPAA also exempts religious schools. See ADA Title III Technical Assistance Manual. But even if a court found this argument compelling, the exemption would only extend to disability-related discrimination. Meaning, religious schools would still be covered under the VPAA and prohibited from discriminating against students on the basis of their sexual orientation, gender identity, race, color, national origin, etc.

While the HRC is clear that it has jurisdiction to enforce the anti-discrimination laws against any school, the HRC would support effort from the Legislature to clarify the definition of "any school" to mean any religious, secular, independent, or public school at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public. The definition must also include schools outside the State of Vermont that receive and accept students from Vermont, specifically students using public funds to attend those schools.

For school "choice" to be truly meaningful, students with disabilities and/or who identify as LGBTQ must have the same choice as their non-disabled, cisgender, straight peers. To this end, the Commission fully supports this bill.

More specifically, the HRC supports the provisions that outline the conditions of eligibility of an approved independent school to receive public tuition. In fact the Commission would like to see all schools adopt and implement policies and procedures to comply with federal and state anti-discrimination laws as well as post these policies and procedures on its website and in prominent places, if it hasn't already done so.

Furthermore, the Commission supports the added condition that all approved independent schools enroll students on IEP plans.

However, the HRC encourages the Committee to include language that captures all students with disabilities, including those on a 504 Plan in accordance with Section 504 of the Rehabilitation Act or not on any identified plan at all. Many students with disabilities are in need of assistive devices, reasonable accommodations in the classroom and/or services that some schools may deem to be unfavorable characteristics for their ideal student body.

For all of the foregoing reasons, the HRC supports S.219 and thanks the Chair and Sponsor of this bill as well as the Committee members for the opportunity to provide testimony.

Please do not hesitate to contact me with any questions or concerns.

Thank you.

Sincerely,

/s Bor Yang

Bor Yang
Executive Director and Legal Counsel