



VISA Position Paper

Restoring Dual Enrollment Eligibility for All Students

Legislative Background

In passing Act 77, the 2013 Legislature enacted a revised dual enrollment statute – 16 V.S.A. § 944 – providing financial support for high school students to take college-level courses from college instructors and receive credit toward both high school and college graduation.

The legislation specifically excluded from dual enrollment financial support those Vermont resident students attending independent schools on a private-pay basis.

The students prevented from participation in the dual enrollment program by 16 V.S.A. § 944 were eligible under previous dual enrollment statutes and did in fact participate then.

VISA Position

All Vermont-resident students are entitled to a publicly-funded preK-12 education. Students may use as much or as little of their entitlement as they wish, without prejudice to the entitlement availability.

The 2013 enactment of 16 V.S.A. § 944 specifically identified a segment of Vermont-resident high school students and created a discriminatory practice against that group. This discriminatory practice should be discontinued because it is:

- inconsistent with the remainder of Section 944;
- inconsistent with wider state policy supporting equity and opportunity;
- contrary to Vermont Supreme Court holdings concerning educational opportunity; and
- likely in violation of provisions of the Vermont Constitution and U.S. Constitution.

Section 944 Inconsistency & Discrimination

Section 944 permits all Vermont resident students except those who attend independent schools without public support to receive the full benefits of the dual enrollment program.

Privately supported students in educational settings other than an independent school are permitted to participate. These settings include home study students and students attending a public school on a private-pay basis. (See 16 V.S.A. § 563 and State Board of Education Rule 4400 series.)

The prohibition against privately-funded independent school students is discriminatory, inequitable and denies equal opportunity to some Vermont resident students.

Equity & Equal Opportunity Inconsistencies

Vermont's general policy on one's right to equal educational opportunity is enacted in 16 V.S.A. § 1:

*The right to public education is **integral** to Vermont's constitutional form of government and its guarantees of political and civil rights. Further, the right to education is **fundamental** for the success of Vermont's children in a rapidly-changing society and global marketplace as well as for the State's own economic and social prosperity. To keep Vermont's democracy competitive and thriving, Vermont students must be afforded **substantially equal access** to a quality basic education. [emphasis added]*

Discrimination against a group of Vermont-resident students on the basis of their freely and legally-made choice of an independent school violates this key statute.

Vermont Supreme Court Holdings

Interpreting the state Constitution, the Vermont Supreme Court has declared education is a "vital interest" of the State. Infringement upon access to one's right to a publicly-supported education requires "a heavy burden of justification."

"From the earliest period in this State, the proper education of all the children of its inhabitants has been regarded as a matter of vital interest to the State, a duty which devolved upon its government and should be fulfilled at the public expense." Williams v. School Dist. No. 6, (1860)

"... the whole subject of the maintenance and support of common schools has ever been regarded in this State as one not only of public usefulness, but of public necessity, and one which the State in its sovereign character was bound to sustain." Williams v. School Dist. No. 6, (1860)

"... in Vermont the right to education is so integral to our constitutional form of government, and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification." Brigham v. State, (1997)

Constitutional Problems

The Common Benefits Clause in the Vermont Constitution invalidates the discriminatory actions mandated in 16 V.S.A. § 944:

"[t]hat government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family or set of persons, who are a part only of that community."

'Common Benefits Clause', Vermont Constitution, Chapter I, Article 7

The Vermont Supreme Court’s Brigham decision cites the Common Benefits Clause and its parallels in the Fourteenth Amendment to the U.S. Constitution in addressing “fundamental constitutional rights.” In Vermont, education is among citizens’ fundamental rights.

“We have held that the Common Benefits Clause in the Vermont Constitution ... is generally co-extensive with the equivalent guarantee in the United States Constitution, and imports similar methods of analysis.”
Brigham v. State, (1997)

“Where a statutory scheme affects fundamental constitutional rights or involves suspect classifications, both federal and state decisions have recognized that proper equal protection analysis necessitates a more searching scrutiny; the state must demonstrate that any discrimination occasioned by the law serves a compelling governmental interest, and is narrowly tailored to serve that objective.”
Brigham v. State, (1997)

Some students affected by the 16 V.S.A. § 944 exclusion attend approved independent religious schools. Questions of constitutionality frequently arise when religious and public school issues intersect. However, constitutional issues do not apply in this situation.

The Vermont Constitution’s “compelled support” clause, barring support for religious instruction, might be relevant if dual enrollment funds went to a religious school or otherwise directly supported religious work. In this instance however, *dual enrollment funds go to the post-secondary institution, not to a high school*. Consequently, no church-state constitutional issue arises under the dual enrollment structure.

Additionally, Vermont’s dual enrollment program supported participation by students enrolled in religious high schools prior to adoption of Act 77 of 2013. No objection on constitutional grounds was raised then.

Vermont Constitution & U.S. Constitution

Two clauses in the Vermont Constitution are relevant to this situation. The education clause is interpreted to mean the state must support education, supporting what the Supreme Court has termed a “constitutionally mandated right.” This creates an educational entitlement enjoyed by all Vermont-resident students.

Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and 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.
Chapter II, §68 , “Education clause”

The common benefit clause is interpreted to mean that government may not advantage or disadvantage any particular set of persons.

"[t]hat government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family or set of persons, who are a part only of that community" ...

Chapter I, Article 7, "Common benefit clause"

As the Vermont Supreme Court has written in its Brigham decision, the common benefits clause is "coextensive" with the U.S. Constitution's Fourteenth Amendment that provides equal protection.

Conclusion

By its Constitution, Vermont has entitled all residents to a publicly-supported education, of which students may partake as they wish.

Discrimination within 16 V.S.A. § 944 against a group of Vermont-resident students is unjust and is contrary to the spirit of educational practice, the opinions of the Vermont Supreme Court and the Constitutions of the State of Vermont and the United States of America.

The problematic portion of 16 V.S.A. § 944 should be remedied in the next legislative session.

Recommended Action

VISA recommends 16 V.S.A. §944 (b) (1) (A) (i) (III) be altered, removing the words "to which the student's district of residence pays publicly funded tuition on behalf of the student."

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