

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.

Commented [PT1]: Add “that have been determined to be eligible for public funding.” ?

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.

Commented [PT2]: Insert “the requirements set forth in these”

To make clear that it is compliance with the requirements even if the law does not apply in so many terms to independent schools.

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.

Commented [PT3]: I am concerned that some schools may see this as an invitation to “calibrate” its tuition request by attempting to segregate tuition devoted to inculcation in religious faith from tuition devoted to secular activities. Could we not simplify by simply saying “Religious instruction that is designed to provide an overview of religious history and teachings and does not support religious indoctrination or worship will not be considered ‘religious indoctrination’ under the terms of this Chapter.”

Alternatively, if it is felt important to keep the first part in, you might provide that the school requesting “eligibility” designation must submit the same tuition bill that is provided parents of students attending the institution and certify that the tuition for which reimbursement is requested does not support worship or religious teaching or indoctrination.” And then continue with the rest of this paragraph.

Commented [PT4]: “headmistress” or other administrator who performs the same functions at the institution?

Commented [PT5]: I would add a new subsection here to this effect:
“The Agency of Education shall establish a process to be followed by independent schools requesting eligibility designation [and shall prepare a simple form to be signed by such institutions certifying compliance with the requirements set forth herein]. and publicize the process either through individual notice or on its website.”

Commented [PT6]: I am not sure this is necessary, but I think it is worth considering: Should the Agency of Education prepare a simple contract to be entered into between the state and the independent school in which the school undertakes to accept up to X number of publicly funded tuition students and the state agrees to provide the public funds, conditioned upon maintaining eligibility status.”? This brings it even closer to the model suggested by Justice Barrett in oral argument in the Maine case.

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

3 (d) Definition. As used in this title, an approved independent school that is
4 eligible to receive public tuition under this section shall be referred to as an
5 “approved independent school eligible to receive public tuition.” An
6 independent school meeting education quality standards under section 165 of
7 this title or an approved independent school in Vermont functioning as an
8 approved area career technical center under chapter 37 of this title that seeks to
9 receive public tuition is required also to qualify as an approved independent
10 school eligible to receive public tuition.

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

12 § 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN
13 VERMONT

14 (a) Findings and purpose.

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

1 education by passing it on to local governments, which are themselves
2 creations of the state.” *Id.* at 395.

3 * * *

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

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

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

14 (iii) enrolling any student with an individualized education
15 program (IEP) who requires special education services and who is placed in
16 the approved independent school as an appropriate placement and least
17 restrictive environment for the student by the student’s individualized
18 education program team or by the local education agency (LEA) as required
19 under section 2973 of this title.

20 * * *

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

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

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

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

19 (3) The school enrolls any student with an individualized education
20 program who requires special education services and who is placed in the
21 approved independent school as an appropriate placement and least restrictive

Commented [PT7]: Ditto above: "with the requirements set forth in these"

1 environment for the student by the student’s individualized education program
2 team or by LEA as required under section 2973 of this title. This condition
3 only applies if the school is eligible for and receives public tuition.

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

12 * * *

13 * * * Unlawful Employment Practice * * *

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

15 § 495. UNLAWFUL EMPLOYMENT PRACTICE

16 * * *

17 ~~(e) The provisions of this section prohibiting discrimination on the basis of~~
18 ~~sexual orientation and gender identity shall not be construed to prohibit or~~
19 ~~prevent any religious or denominational institution or organization, or any~~
20 ~~organization operated for charitable or educational purposes, that is operated,~~
21 ~~supervised, or controlled by or in connection with a religious organization,~~

1 ~~from giving preference to persons of the same religion or denomination or~~
2 ~~from taking any action with respect to matters of employment that is calculated~~
3 ~~by the organization to promote the religious principles for which it is~~
4 ~~established or maintained. [Repealed.]~~

5 * * *

6 * * * Dual Enrollment * * *

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

8 § 944. DUAL ENROLLMENT PROGRAM

9 * * *

10 (b) Students.

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

13 (A) the student:

14 * * *

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

17 (iii) is a home study student; or

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

20 * * *

Commented [PT8]: I see the purpose behind this restriction, but I wonder why students enrolled in schools not eligible for public tuition should not also be allowed to participate so long as the courses for which dual enrollment credit is provided are not courses which involve religious worship or indoctrination. I would prefer that eligibility for dual enrollment turn on the courses taken rather than the character of the school attended. I think it is more likely to survive constitutional challenge.

1 shall describe in writing actions that a district must take in order to meet either
2 or both sets of standards and shall provide technical assistance to the school. If
3 the school fails to meet the standards or make sufficient progress within two
4 years of the determination, the Secretary shall recommend to the State Board
5 one or more of the following actions:

6 * * *

7 (4) the State Board close an individual school or schools and require that
8 the school district pay tuition to another public school or an approved
9 independent school ~~pursuant to chapter 21 of this title~~ eligible to receive public
10 tuition; or

11 * * *

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

13 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

14 * * *

15 (b) Approved independent schools. On application, the State Board shall
16 approve an independent school that offers elementary or secondary education
17 if it finds, after opportunity for hearing, that the school provides a minimum
18 course of study pursuant to section 906 of this title and that it substantially
19 complies with all statutory requirements for approved independent schools and
20 the Board's rules for approved independent schools. ~~An independent school~~
21 ~~that intends to accept public tuition shall be approved by the State Board only~~

1 ~~on the condition that the school agrees, notwithstanding any provision of law~~
2 ~~to the contrary, to enroll any student who requires special education services~~
3 ~~and who is placed in or referred to the approved independent school as an~~
4 ~~appropriate placement and least restrictive environment for the student by the~~
5 ~~student's individualized education program team or by the local education~~
6 ~~agency; provided, however, that this requirement shall not apply to an~~
7 ~~independent school that limits enrollment to students who are on an~~
8 ~~individualized education program or a plan under Section 504 of the~~
9 ~~Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to~~
10 ~~a written agreement between the local education agency and the school.~~

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

21 * * *

Commented [PT9]: I would be inclined to add just to underscore it:
"The fact that a school is 'approved' under this section does not mean that the school is necessarily eligible to receive publicly funded tuition support."

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

2 § 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY
3 SCHOOLS OR PAY TUITION

4 * * *

5 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
6 school district that does not maintain an elementary school may grant general
7 authority to the school board to pay tuition for an elementary student at an
8 approved independent elementary school eligible to receive public tuition or an
9 independent school meeting education quality standards pursuant to sections
10 823 and 828 of this chapter upon notice given by the student's parent or legal
11 guardian before April 15 for the next academic year

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

13 § 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
14 PAY TUITION

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

17 (1) the electorate authorizes the school board to close an existing high
18 school and to provide for the high school education of its students by paying
19 tuition to a public high school, an approved independent high school eligible to
20 receive public tuition, or an independent school meeting education quality

1 standards, to be selected by the parents or guardians of the student, within or
2 outside the State; or

3 * * *

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

6 * * *

7 (B) to an approved independent school eligible to receive public
8 tuition or an independent school meeting education quality standards if the
9 school board judges that a student has unique educational needs that cannot be
10 served within the district or at a nearby public school.

11 * * *

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

13 § 823. ELEMENTARY TUITION

14 * * *

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

20 * * *

Commented [PT10]: Does this mean that if a student has unique educational needs, the school to which he is assigned does not have to meet eligibility requirements for publicly funded tuition support?

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

2 § 824. HIGH SCHOOL TUITION

3 * * *

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

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

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

12 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC
13 HIGH SCHOOL OF A SCHOOL DISTRICT

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

18 * * *

19 (c) A parent or legal guardian who is dissatisfied with the instruction
20 provided at a designated school or who cannot obtain for ~~his or her~~ the parent's
21 or legal guardian's child the kind of course or instruction desired there, or

1 whose child can be better accommodated in an approved independent school
2 eligible to receive public tuition or public high school nearer ~~his or her~~ the
3 child's home during the next academic year, may request on or before April 15
4 that the school board pay tuition to another approved independent school
5 eligible to receive public tuition or public high school selected by the parent or
6 guardian.

7 * * *

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

9 * * *

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

16 (3) unless otherwise directed by an affirmative vote of the school
17 district, when the Strafford Board approves a parental request to pay tuition to
18 a nondesignated approved independent school eligible to receive public tuition
19 or public school, the Board shall pay tuition to the nondesignated school
20 pursuant to section 824 of this title for the year in which the student is enrolled;

1 provided, however, that it shall not pay tuition in an amount that exceeds the
2 tuition paid to the designated school for the same academic year.

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

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

5 A school district shall not pay the tuition of a student except to a public
6 school, an approved independent school eligible to receive public tuition, an
7 independent school meeting education quality standards, a tutorial program
8 approved by the State Board, an approved education program, or an
9 independent school in another state or country approved under the laws of that
10 state or country, nor shall payment of tuition on behalf of a person be denied
11 on account of age. Unless otherwise provided, a person who is aggrieved by a
12 decision of a school board relating to eligibility for tuition payments, the
13 amount of tuition payable, or the school ~~he or she~~ the person may attend, may
14 appeal to the State Board and its decision shall be final.

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

16 § 1073. “LEGAL PUPIL” DEFINED; ACCESS TO SCHOOL

17 * * *

18 (b) Access to school.

19 * * *

20 (2) Right to enroll in a public or independent school. Notwithstanding
21 the provisions of sections 822 and 1075 of this title, a pregnant or parenting

1 student may enroll in any approved public school in Vermont or an adjacent
2 state, any approved independent school eligible to receive public tuition in
3 Vermont, or any other educational program approved by the State Board in
4 which any other legal pupil in Vermont may enroll.

5 * * *

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

7 § 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

8 * * *

9 (e) Under section 2973 of this title, a supervisory union, in its role as the
10 local education agency, may place a student with an individualized education
11 program under the Individuals with Disabilities Education Act, 20 U.S.C.
12 chapter 33, with ~~certain~~ approved independent schools ~~that accept public~~
13 ~~tuition~~ eligible to receive public tuition. If the approved independent school is
14 entitled to special education cost reimbursement under that section, it may bill
15 the supervisory union for excess special education costs incurred by the
16 independent school in providing special education services to that student
17 beyond those covered by general tuition. If those costs for that student exceed
18 the extraordinary expenditures threshold as defined in subdivision (a)(2) of this
19 section, the supervisory union shall be entitled to extraordinary reimbursement.

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

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

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

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE