

To: Senator Brian Campion
Chair Senate Education Committee
From: Peter Teachout. Professor of Law
Vermont Law School
In re: Comments on most recent version of S.219
Date: February 8, 2022

I have read over the most recent version of S.219 and think it represents an important step in the right direction. I attach below my comments on specific provisions in the bill which should appear in electronic and printed version in the right-hand column. For the most part, these comments are aimed at clarifying what is intended.

However, I do suggest a few substantive changes for the Committee's consideration which can be summarized as follows:

(1) I suggest that the Agency of Education establish a process under which independent schools wishing to be listed as eligible for public funding could submit requests to be so designated and that the Agency of Education provide notification of this process either on its website or through direct communication with the institutions themselves.

(2) I suggest that the Agency of Education create and make available a simple form to be signed by independent schools incorporating the requirements that the independent schools must meet to be listed as eligible for public funding.

(3) I wonder if some consideration might be given to carrying this a further step and have the state and the independent schools actually sign a contract under which the independent school commits to accept X number of publicly funded students and the state agrees to pay X tuition for each student so accepted and actually enrolled, contingent upon compliance with the two requirements. This is not necessary, but it adopts the contract mechanism suggested by Justice Barrett in oral argument in the Maine case.

(4) Finally, with respect to dual enrollment although I respect the Committee's decision to proceed otherwise, I suggest that students attending schools not eligible for public funding be allowed to participate in the dual enrollment program so long as the undergraduate level courses for which they are receiving credit are secular in thrust and substance and do not involve religious worship or inculcation in the faith or religious indoctrination. That would not be inconsistent with the Chittenden School District decision and it might help to insulate the program from successful constitutional challenge on free exercise grounds.

These suggestions are incorporated in the "comments" that appear in the right-hand column of the printout of the bill attached.

I look forward to sharing views with the Committee tomorrow afternoon.