

Joint Hearing – House Education Committee and House Human Services
February 7, 2024

Hello and thank you for allowing me to testify today. For the record, my name is Neil Odell and I am a school board member in Norwich, VT serving on both the Norwich School Board and the Dresden Interstate School Board. I reviewed Wednesday's discussion of after school funding that occurred in the Senate Health and Welfare Committee. In that meeting Chair Lyons made a comment that I thought was very pertinent for this conversation. She said "We can always improve what we have" – that's why I'm here today. I'm hoping that we can improve on what we have or, at the very least, prevent what we have from going in the wrong direction.

What is the right way to control and monitor the flow of after-school program money? Should it remain in the Education Fund and be distributed through the LEAs or should it be pulled out to a special fund and be routed directly to private providers? In attempting to answer that question I believe we'd be well served to consider the current challenges with our education funding system in the wake of Carson V. Makin. And there are many – things like equitable funding, separate and unequal systems of accountability and transparency, anti-discrimination challenges, public money flowing to religious schools – these all stem from previous decisions we have made. You are currently facing some of the very same decisions when it comes to funding of after school programs. I worry that if you make the same choices – if you pull dollars into a separate fund and setup up yet another set of accountability and transparency rules – you will run into the same issues. You will spend countless years in lawsuits and this body will spend years wrangling over changes to a system that could have been better from the start.

Privatization in education has resulted in equity challenges and the same holds true for after-school programs. Federal court decisions prevent Vermont from imposing our nondiscrimination statutes – the same ones that apply to public schools - on private entities if those entities claim the anti-discrimination laws are inconsistent with their religious expression. Private providers are not required to serve all kids, they can choose who they serve. This is not theoretical, there are currently licensed after school programs that have left LGBTQ status out of their anti-discrimination requirements.

And moving the after school money out of the Education Fund exacerbates this problem. When money flows from the Education Fund through LEAs it comes with accountability and transparency requirements. Public schools are required to serve every student. However, if the money was moved to a special fund and no longer distributed through LEAs these protections are eroded. This point has been confirmed by Emily Simmons, General Counsel for the Agency of Education. When asked if entities funded from a special fund would be required to adhere to Vermont's anti-discrimination statutes she stated "Private and non-profit and for-profit programs funded out of the proposed afterschool and extended learning special fund are required to follow the Vermont Public Accommodations Act to the extent of, where applicable, those entities' exercise of their own constitutional rights". Put another way, if the private provider feels that any of the anti-discrimination requirements violate their freedom of religious expression they don't need to follow them.

I'm also worried that we're not being mindful of our own constitution. Article 3, sometimes referred to as our compelled support clause, states, "That all persons have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience". This isn't trivial, it's a foundational value of our state. The direction that we are potentially headed with after-school funding and our education system is in direct conflict with our own constitution. We cannot be sending public taxpayer dollars to any program, after-school or otherwise, that openly discriminate against our children and it's clear that simply requiring entities to comply with Vermont's Public Accommodations Act is insufficient. By keeping the money in the Education Fund we utilize the structures and a framework already in place to guard against the potential abuse of tax payer money.

It's clear to me that a large portion of the legislature strongly supports anti-discrimination. Just a couple of days ago many of you signed onto a letter in support of Vermont's LGBTQ community. You wrote that you "are profoundly concerned about the recent surge in hate crimes targeting the LGBTQ+ community". You now have the opportunity to use that concern in your law making role. You can keep the after school funds in the Education fund where they are protected. This, in turn, will make sure that our LGBTQ community and others are protected from discrimination in after school care. Every kid deserves this, we owe it to them.