



To: Senate Education Committee  
From: Sue Ceglowski, Executive Director, VSBA, on behalf of Education Equity Alliance  
Re: H.483  
Date: April 13, 2023

Thank you for the opportunity to testify on H.483. I am testifying today on behalf of the Education Equity Alliance (EEA) which consists of the Vermont School Boards Association, the Vermont-NEA, the Vermont Superintendents Association and the Vermont Principals' Association.

Vermont communities, taxpayers, K-12 students, and schools are now at a defining crossroads. In June 2022, the US Supreme Court set new rules in the *Carson v. Makin* case relating to taxpayer funding of exclusionary private schools. As noted by the Vermont ACLU in [testimony to the House Education Committee](#), at a practical level, the *Carson* decision “means that if a state chooses to subsidize private education, it generally must treat religious schools and non-religious schools the same.”

The ACLU explained to the House Education Committee that “Carson marks a substantial shift in constitutional law and therefore how we think about our traditions – specifically, how we balance the First Amendment rights to freely express one’s religion with protecting against government establishment of religion. As a result of this decision, the Supreme Court has put Vermont in a very difficult position as it seeks to comply with the Court’s ruling while still upholding Vermont’s own constitutional protections, democratic values, and traditions.”

The Supreme Court’s decision opened the door to changes in Vermont’s taxpayer backed Education Fund (which is always under cost pressures) through more funding of private schools, including religious schools. At the same time, the compelled support clause in [Chapter I, Article 3 of the Vermont Constitution](#) says that no person “can be compelled... to support any place of worship... contrary to dictates of conscience.” As elected officials, you take an oath to uphold the Vermont Constitution and so you have to figure out if there is a way forward that will comply with the Supreme Court’s ruling and the Vermont Constitution.

We believe the way forward requires Vermont lawmakers to reset state laws governing the use of Vermont’s Education Fund based on the following universally shared values:

1. It is our duty to provide an equal education opportunity to all families,
2. All Education Fund dollars should be subject to consistent transparency and accountability, and
3. All taxpayer funded schools must treat students and staff equitably, free from unlawful discrimination.

Based on these shared values, the Education Equity Alliance believes H.483 is a useful step forward, even as we recognize it does not fully address the challenges we face, especially passing muster with the conservative majority on the U.S. Supreme Court. Vermont is paying private schools to provide a public education. **H.483 is a step toward ensuring that those schools are held to the same set of standards as Vermont public schools and that Vermonters' hard-earned tax dollars are used as equitably, transparently, and with as much accountability as possible.**

**Transparency and accountability are built into the public education system through Vermont's laws, rules and regulations.** Every weekday evening throughout Vermont, publicly elected school boards are meeting to govern our public school districts. Their agendas are posted ahead of time, with specific notice about the topics that will be covered. Their meetings are open to the public - community members have the right to attend and the opportunity to speak to the board by providing public comment. Beyond public comment, school boards engage their communities to establish the mission and vision of the district and they use the mission to guide decision making, including important decisions about how Vermonters' tax dollars are used in the district's budget. After school boards approve budgets, the voters have the final say by voting the budget up or down. **School boards are accountable to the voters.**

As CEOs of their districts, superintendents develop the work plan to achieve the school board's mission. They manage services, programs and resources, for the quality of learning, supported by the voter approved budget. Annually, superintendents must attest to dozens of specific assurances in more than twenty specific categories related to a host of laws and regulations intended to assure fidelity in the administration and operation of Vermont's publicly funded schools. **Superintendents are accountable to the school board and to the State for operating within statute and regulations.**

Principals serve as instructional leaders, developing school building specific practices that support the educational mission of the district. **Principals are accountable to the superintendent.**

Public school teachers use data to inform their teaching and to make teaching responsive to individual needs (“differentiated instruction”), based upon what is best for students. They implement high quality learning opportunities that engage students and move all students toward meeting ambitious goals connected to the educational mission of the district. **In addition to teachers being accountable to their superintendent, all public schools employ teachers who are licensed by the state, and the licensing requirements are updated regularly to ensure evolving students’ needs are front and center.**

While H.483 does not make private schools receiving public tuition accountable to the voters, it does provide increased accountability to taxpayers, the State and to the school district that is paying the tuition. Accountability measures include (1) reporting requirements for attendance, academic progress, state mandated assessments and enrollment changes, and (2) attestation requirements related to nondiscrimination, compliance with Vermont’s Public Accommodations Act and compliance with the prohibition on the use of public funds to subsidize the tuition of private pay students.

**Additionally, H.483 includes important anti-discrimination measures**, including (1) requiring private schools receiving public tuition to adopt and implement policies and procedures to comply with the Vermont Public Accommodations Act (VPAA) and Fair Employment Practices Act (VFPA), (2) amending the Public Accommodations Act to clarify that it applies to all schools whose services are offered to the general public and (3) not allowing private schools to use an admissions process that includes mandatory interviews, academic entrance exams, academic history, mandatory campus visits, or consideration of ability to pay for any costs or fees. **We support these anti-discrimination measures as an important step in the right direction.**

**Vermont public schools have always been required to comply with the VPAA.** They are also required to follow federal civil rights statutes including Title VI (prohibits recipients of federal funds from discriminating on the basis of race, color and national origin), the Equal Educational Opportunities Act (requires states and local school districts to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs), Title IX (prohibits recipients of federal funds from discriminating on the basis of sex), Section 504 (requires recipients of federal funds to ensure that students with disabilities have nondiscriminatory access to all programming), Americans with Disabilities Act (requires entities that offer public accommodations to ensure that students with disabilities have nondiscriminatory access to all programming), and the Individuals with Disabilities Education Act (requires public schools to provide students with disabilities a free appropriate public education and related services to meet their needs).

## Statutes: Race, National Origin, English Learners

Public Schools	Private Schools
<p>Title VI</p> <ul style="list-style-type: none"> <li>Prohibits recipients of federal funds from discriminating on basis of race, color, national origin</li> </ul> <p>Equal Educational Opportunities Act</p> <ul style="list-style-type: none"> <li>Requires states and local school districts to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs</li> </ul>	<p>42 U.S.C. § 1981</p> <ul style="list-style-type: none"> <li>Prohibits discrimination on basis of race in the forming of contracts</li> </ul> <p>No statutory protections for English Learners</p>

*Mead, J., & Eckes, S., How School Privatization Opens the Door to Discrimination*

## Statutes: Sex, Sexual Orientation, Gender Identity

Public Schools	Private Schools
<p>Title IX</p> <ul style="list-style-type: none"> <li>Prohibits recipients of federal funds from discriminating on the basis of sex</li> </ul>	<p>Private Schools</p> <ul style="list-style-type: none"> <li>Title IX does not apply to private schools that receive federal funds</li> <li>Title IX has a religion exemption</li> </ul>

*Mead, J., & Eckes, S., How School Privatization Opens the Door to Discrimination*

# Statutes: Students with Disabilities

Public Schools	Private Schools
<p>Section 504</p> <ul style="list-style-type: none"> <li>Requires recipients of federal funds to ensure that students with disabilities have nondiscriminatory access to all programming</li> </ul> <p>Americans with Disabilities Act (ADA)</p> <ul style="list-style-type: none"> <li>Requires entities that offer public accommodations (including private schools) to ensure ensure that students with disabilities have nondiscriminatory access to all programming.</li> </ul> <p>Individuals with Disabilities Education Act (IDEA)</p> <ul style="list-style-type: none"> <li>Requires public schools to provide students with disabilities a free appropriate public education (FAPE) and related services to meet their needs.</li> </ul>	<ul style="list-style-type: none"> <li>Section 504 does not apply if school receives no federal funding.</li> <li>ADA applies to private schools, but exempts religious schools</li> <li>IDEA can apply when students with disabilities are placed in private schools pursuant to this act.</li> </ul>

*Mead, J., & Eckes, S., How School Privatization Opens the Door to Discrimination*

**Vermont public schools are focused on providing a safe, supportive learning environment for each and every student.** This includes supporting Gay Straight Alliance (GSA) networks and other affinity groups for LGBTQ students. These groups often work with building administration to address individual or group concerns and needs. Vermont public schools regularly respond to the myriad of needs of their LGBTQ students, including taking steps to ensure students' preferred names and pronouns are used by teachers, staff and students, that school nurses are adequately trained to respond to all students' needs, and that appropriate bathroom and locker room facilities are available. Yesterday, a young trans man and his father testified in the House Health Care Committee about the amazing support he received from his public high school throughout his high school years. You can watch that powerful testimony here: <https://www.youtube.com/watch?v=215r5eFsM5M>

There are many private schools in Vermont with a business model that depends on taxpayer funded tuition; H.483 does not change the equation - those schools can still be subsidized by the taxpayers as long as they comply with the requirements in the bill. It is appropriate to ask them for a certain level of accountability, especially when taxpayers are funding private schools at the level of \$50-60 million per year. We already expect similar (and often greater) accountability from other recipients of tax dollars. **Also, there are many private schools that assert they are already meeting many of the bill's requirements.**

I am attaching data to this testimony that I received from the Agency of Education showing a summary of tuition pupil counts by SU/SD. School districts tuition to four groupings which are Vermont public schools, Vermont private schools, out-of-state public schools and out-of state private schools. Included in the out-of-state private schools are four in foreign countries that are receiving Vermont taxpayer dollars (two in

Quebec, one in Japan and one in Sweden). It is useful to look at the data to understand the context of H.483.

Additionally, today we are requesting that the Committee schedule time to hear from Neil Odell, President of the VSBA. Whether your Senate District includes school districts that operate all grades, school districts that tuition some grades, school districts that tuition all grades or a mixture of all of the above, it's important to understand Vermont's history of subsidizing private education, how it affects the Education Fund, how it affects school budgets statewide and how it affects all of our tax bills. Mr. Odell has developed informative presentations for his local board and community, exploring the history and financing of tuitioning in Vermont (links provided below). I am sure he would be happy to summarize the pertinent information for the Committee.

Vermont's Tuitioning System - A History: <https://youtu.be/V0E5WG2vBf4>

Vermont's Tuitioning System - Financing: [https://youtu.be/XsdJ\\_BMNVIk](https://youtu.be/XsdJ_BMNVIk)

Thank you for the opportunity to testify on H.483. As I said at the beginning, we find ourselves at a crossroad and through a confluence of history and decisions by the US Supreme Court we are called upon to align our state constitutional values and laws. This is no small task. However, we are fortunate to live in a state whose founders ensured the right to public education in our state constitution while also saying no taxpayer should be compelled to support religion. **Every day public schools welcome all students to support and nurture their education and development as they grow to be healthy and productive citizens in our democracy. Taxpayers and students deserve nothing less and we believe H.483 is a modest step as we address the challenges ahead.**