



Officers

Geo Honigford
President
Royalton

Stuart Wepler
Vice President
Elmore

Kim Gleason
Treasurer
Essex

Celeste Girrell
Member-at-Large
Sutton

Marikate Kelley
Member-at-Large
Monkton

Emily Long
Past-President
Leland & Gray UHS

Staff

Nicole Mace
Executive Director
nmace@vtvsba.org

Harry Frank
Director of Board
Education Services
hfrank@vtvsba.org

Kerri Lamb
Director of Operations
klamb@vtvsba.org

Emily Simmons
Director of Legal &
Policy Services
esimmons@vtvsba.org

To: The Senate Education Committee
From: Nicole Mace, Executive Director
Date: January 10, 2017
Re: Independent School Approval Standards

Vermont is one of only two states that allows towns lacking an elementary or secondary school to pay tuition for their students to attend another public or private school. A unique feature of Vermont is that students may also take their “town tuition” to a school out of state.

Like school voucher programs, town tuitioning provides taxpayer dollars to students to pay for public or private school. Eligibility in Vermont is open to all students who are residents of a tuition paying town. However, there is no requirement that private schools accepting public tuition dollars admit all students from tuitioning school districts who wish to attend.

The Vermont tuitioning system is an outlier in many respects, most notably in its long history and the ability to carry vouchers across state lines and even national borders. Private independent schools that are the recipients of public dollars under Vermont’s tuitioning construct do not have to follow the same requirements as public schools, and do not use blind admissions procedures for publicly-funded students.

According to data from the Agency of Education, 5,383 Vermont students participated in the town tuitioning program in the 2015-2016 year, representing close to 7% of total state public school enrollment. Of those 5,383 students, more than half use their voucher to attend a private school or academy. Nationally, voucher participation represents less than 1/2 of 1% of the total school-age population (Center for Public Education, 2015).

Attached to my testimony are two graphic illustrations of the demographics of publicly funded tuition students who attend private versus public schools. These data, provided at my request by the Agency of Education, raise questions about whether current admissions practices in private schools allow equal access to all publicly-funded students.

One cause for concern is that most independent schools offer minimal categories of special education, if any, and some require families to contribute to the costs of special education services out-of-pocket. Most publicly-funded students attend one of the four historic academies (St. Johnsbury, Lyndon Institute, Burr & Burton, and Thetford), which are approved in all categories of special education.

However, that is not the case for all private schools that accept public funds. We have private schools with close to 90% of their students publicly funded that are not equipped to ensure students with disabilities can access their programs. In fact, as the Vermont Independent Schools Association stated in its testimony to the State Board in July, these schools may deny access to students *because* they need special services. The VSBA believes this practice to be a violation of the constitutional rights of students with disabilities to access the same programs and services available to their non-disabled peers.

Representatives of the independent schools promote selective enrollment policies so that they can provide “mission-based education.” The belief is that in order for a school to be effective in fulfilling a mission, the school must be able to deny admission to applicants who do not conform to the school’s mission. This approach to admissions can allow for both conscious prejudice and unconscious biases to shape who is perceived to be a “good fit” for a school.

Throughout our lives, we are exposed to millions of messages about the world around us – messages that shape our perceptions of people, places, concepts and ideas. As a result, all humans possess a range of implicit associations that operate unconsciously outside our awareness, and often times in conflict with our explicit beliefs. Research on the science of human cognition indicates that even people who consciously reject prejudice and discrimination have biases that can affect their perception and behavior.¹

Vermonters are not immune to implicit biases. We are having an important conversation right now about the role bias plays in the area of criminal justice and policing. Research shows that implicit biases can influence educators’ perceptions of, and interactions with, their students. Implicit and explicit biases also play a role in

¹ Kirwan Institute for the Study of Race and Ethnicity, *2016 Implicit Bias Review*, <http://kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf>

the implementation and enforcement of discipline policies, admissions policies and dress codes.²

The most common procedural safeguard in the enrollment context is for admissions to be open and based on a lottery system. Most states in the country that allow K-12 public education dollars to go to private schools require those schools to administer a lottery if demand exceeds capacity. In Vermont, public high schools are required to administer a lottery for admissions under the public high school choice law.

Proceeding with rules to require open enrollment and special education services in private schools that accept public funds is a civil rights imperative. The Vermont constitution states that when government provides a benefit, it must make that benefit available to all on equal terms. Schools that want to have selective enrollment policies should not accept public tuition dollars.

The rulemaking process to date has been less than perfect. Part of the problem stems from the fact that the Shumlin administration prevented Agency of Education staff from supporting the State Board of Education in the process. As you know, the State Board has no independent staff of its own. They have now contracted with outside legal counsel to support the work of redrafting the rules.

The first draft of the rules was not without its problems. But the statutory rulemaking process is designed to have stakeholder input and public comment periods in order to identify problem areas and have them addressed before the rules are finalized. As far as I can tell, this process is working just as it should.

The Attorney General has determined that the State Board has the authority to promulgate rules addressing issues such as special education and open enrollment. Representatives from the independent schools, the State Board of Education, and public school representatives have been meeting over the past month to determine areas of common ground and opportunities to improve the rules. The State Board stated unequivocally in its November 29th memo that it has no intention of using this process to force independent schools to follow all of the same laws and regulations that public school districts have to follow.

² Sharon L. Davies, *Driving Campus Diversity One Decision at a Time*, <http://www.aacu.org/liberaleducation/2016/fall/davies>

At its core, the State Board of Education's rulemaking process governing independent school approval is designed to ensure equal opportunity and access to publicly-funded education. These updated rules are crucial to ensuring that all students, regardless of their disability or protected class status, are able to enroll with their peers in any private school that is funded with public education dollars.

We respectfully ask that the General Assembly allow this process to continue without limiting the authority of the State Board to fulfill its statutory role of establishing and advancing education policy for the State of Vermont.