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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 Vermont State Board of Education
From: Nicole Mace, Executive Director
Date: July 11, 2016
Re: Independent School Approval Standards

Public dollars that support private schools should carry with them the same obligations regarding quality, equity, efficiency, transparency and accountability (the Act 46 goals) that apply to public school districts.

With those goals in mind, the Vermont School Boards Association (VSBA) recommends that the revised State Board of Education (SBE) rules for independent school approval:

- Establish quality standards at least equal to those required in public schools,
- Require open enrollment policies and procedures to guard against discrimination towards any protected class of student,
- Ensure transparency regarding the implementation of these policies and procedures and use of public dollars, and
- Include mechanisms to enforce accountability.

More specifically, the revised rules should state that for an independent school to be eligible to receive public education funds, the school shall:

- Not discriminate or deny enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, gender identity or disability
- Operate with an open admissions policy, meaning that it accepts all publicly-funded students on a space-available basis
- Be approved for special education services in *at least* four categories and arrange for special education services related to *any* disability category if required in an enrolled student's individual education plan
- Administer state assessments and make outcomes data available to the public in the same manner as public schools
- Provide free and reduced lunch to all eligible students
- Employ teachers and administrators that have licenses and endorsements required by professionals working in public schools

Finally, given the state's interest in maintaining a viable system of public schools, the rules should also state that the SBE will not approve a new independent school that was previously the public school for the same grades in the same school district.

Background and Rationale:

Vermont is one of only two states that allow 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.

According to data from the Agency of Education, 5,390 Vermont students participated in the town tuitioning program this year, representing close to 7% of total state public school enrollment. Of those 5,390 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).

This means that the use of tuition vouchers in private schools in Vermont is seven times the national average. This is significant, given the declines in Vermont's student population over the past two decades and the state's policy interest in keeping public schools viable.

Like school voucher programs, town tuitioning provides taxpayer dollars to students that they can use 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. **Vermont also has minimal accountability for student performance for independent schools receiving public dollars, whereas the trend across the country is to establish performance indicators for schools accepting vouchers** (Center for Public Education, 2015).

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 often do not serve the same

students that public schools do. Data prepared by the Agency of Education in January of 2016 illustrate that while 40% of students in Vermont public schools are eligible for free and reduced lunch, just 28% of publicly-funded students attending independent schools and 25% of publicly-funded students attending one of the four academies (St. Johnsbury, Burr & Burton, Thetford, and Lyndon Institute) are FRL-eligible.

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. Some independent schools bill the sending school district for the costs of special education services, over and above the amount paid for tuition. Two-thirds of the independent schools with more than 30% publicly-funded students are not approved to provide special education services in all areas – many of these schools are not approved to provide any special education services.

Independent schools are also free to set tuition rates that vary from town to town. While public school districts must offer the same tuition terms to all sending towns, independent schools are exempt from this rule (16 V.S.A. 824). Independent schools' tuition is the average announced tuition of union high schools *except* in towns where the electorate approves a higher tuition amount. In these towns, the higher tuition voted by the electorate pays the full tuition for resident students.

In towns that do not authorize tuition payments over and above the average announced rate, parents are often responsible for paying the difference. In some independent schools the difference can be paid out of school-operated scholarship programs. The extent of this practice and of parent-paid tuition is unknown as independent schools are not required to disclose their financial data.

Other states do not have the same expansive voucher model as Vermont. In states that do allow public dollars to fund private schools, vouchers are typically tailored to serve students that attend a neighborhood school that has been deemed “failing” and who demonstrate financial need. Many of these systems rely on tax credits or scholarships that are funded by revenue from the state’s general fund. Despite the limited scope of these programs, most states have clear standards for private schools before those institutions can receive public education dollars, including nondiscrimination requirements.

Finally, there are a host of legal questions surrounding the current practice of allowing public funds to go to private institutions that do not adhere to the same non-discrimination and accountability standards that apply to public school districts, including whether such a construct violates the Education and Common Benefits Clauses of the Vermont Constitution or the Vermont Public Accommodations Act.

As the Vermont Supreme Court stated almost twenty years ago, “In Vermont, the right to education is so integral to our constitutional form of government and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification.” (*Brigham v. State of Vermont*)

We see no justification for a system that allows private institutions to selectively determine which publicly-funded students they will serve. Therefore, the VSBA strongly urges the State Board of Education to ensure that the independent school approval rules reflect the state’s commitment to educational equity and non-discrimination by expressly prohibiting practices such as selective enrollment policies and by ensuring independent schools are held to the same quality standards as public schools.

Cc: Rebecca Holcombe, Secretary of Education
Gregory Glennon, General Counsel, Agency of Education