



December 6, 2016

James M. Diaz, Esq.
Staff Attorney / Public
Advocate
T/802.223.6304
jdiaz@acluvt.org

Vermont State Board of Education

**Re: ACLU of Vermont Comment on VSBE Proposed
Rulemaking on Independent School Approval**

Board of Directors

To the esteemed members of the Vermont State Board of Education:

James Morse, president

Julie Kalish, vice president

Pamela Marsh, secretary

Bernie Lambek, treasurer

Robert Appel

Peter Asch

Denise Bailey

Euan Bear

Traci Griffith

Ana Hernandez

Geoffrey Jones

Brad Myerson

David Putter

Tony Pyle

Richard Saudek

Bill Sayre

Bill Schubart

Abe Sender

On behalf of the ACLU of Vermont, I write to encourage the State Board to move forward with its proposed rulemaking regarding Vermont-based Independent Schools. The ACLU of Vermont is a legal non-profit which advocates for the civil liberties and civil rights of Vermont residents under the Vermont and U.S. Constitutions. We have over 2,000 members across the state. During our fifty year history, ACLU of Vermont lawyers and advocates have sought to uphold Vermonters' constitutional right to an equitable education, among other constitutional rights and democratic imperatives.

With its proposed rules, the State Board is proactively taking steps to ensure that an equitable education is available to all publicly funded students, publicly funded students' constitutional rights are upheld wherever they attend school, and government remains transparent. We applaud these efforts and hope to see the rules move forward.

Open enrollment policies and special education services are the hallmark of an equitable school. The proposed rules ensure that students cannot be discouraged from enrolling because of their sexual orientation, gender identity, national origin, disability, race, or other protected class status.

They will also help ensure that students showing previous academic challenges will not be excluded. Such discouragement can turn schooling into a two-tier system where the students who need the most resources receive the fewest. While we appreciate the flexibility independent schools need to develop unique learning environments and pursue innovative pedagogical approaches, these special traits need not come at the cost of the most vulnerable students. In fact, the vulnerable students may benefit most from these innovative educational philosophies.

Adequate constitutional safeguards in school safety and governance rules, including a discipline plan that meets the constitutional standards of due process, are also necessary to ensure publicly funded students receive the equal protection of law. I have personally represented students who were suspended and expelled from independent schools for

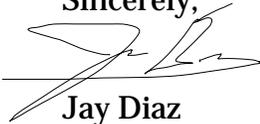
minor infractions without any process whatsoever. One such incident was detailed in a report I drafted, entitled *Kicked Out! Unfair and Unequal Student Discipline in Vermont's Schools*. These summary denials of Vermonters' educational rights teach students that they are not welcome and that there is nothing they can do about it. This is not how a democratic society teaches its children.

Finally, with these rules, the ACLU of Vermont hopes Vermonters will be able to acquire a better understanding of the educational outcomes of publicly funded students. Data collection, analysis, and comparison are vital to understanding the status of our education system – where it is working and where it isn't, including in independent schools. Data also allows local schools to share knowledge and more quickly determine which pedagogical approaches are the most effective. Vermont must be able to aggregate educational data for all publicly funded students in order to know how best to teach the next generation.

In the interest of civil rights, civil liberties, and government transparency, the ACLU of Vermont hopes the board will move forward with the proposed rulemaking. As a society and a state, we need to affirm our commitment to equity, individual rights, and transparency, now more than ever.

Please do not hesitate to contact me with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Diaz", with a horizontal line drawn underneath it.

Jay Diaz
Staff Attorney / Public Advocate