To: Chair Jenny Samuelson and members of the VT State Board of Education
From: Rebecca Holcombe, current state representative, former VT secretary of education
Date: Oct 3, 2023
Re: Public comment: the state board must ensure equitable opportunity in private schools funded by vouchers from the public education fund

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Thank you for giving your time to serve the state of Vermont and our children. I know you care about the state and its children, or you would not give of your time this way.

As you reopen the 2000 series (and subsequently, the connected 2200 series), I am writing to respectfully request the state board of education to:

1. apply all the same education quality rules and standards to both public schools and to private schools that are paid tuition vouchers that are funded by the public education fund
2. require open enrollment in any private school that receives funding from the public education fund.
3. require publication of the same performance data for taxpayer-funded private schools that is published for public schools, including assessment scores, and
4. ensure state rules comply with federal law.

As the state board has learned, the 2000 series is linked to the 2200 series, so one cannot be treated without consideration of the other. Of immediate concern: the rules as proposed are out of compliance with federal and state law. Moreover, they fail to protect the right of publicly-funded students in private schools to equitable education opportunities.

A. **The state board must comply with federal law for students with disabilities, and the proposed rules do not,** Federal regulations related to implementation of the federal Individuals with Disabilities Education Act (IDEA) require that **students with disabilities that Local Education Agencies (LEAs) place in private schools must have access to the same standards of education that those students would have in a public school.** 34 CFR 300.146 requires the state educational agency (SEA) to ensure each child with a disability placed in or referred to a private school "is provided an education that meets the standards that apply to education provided by the SEA and LEAs." The state agency cannot do this if the state board rules set a lower standard for private schools as it currently does. As the state board, you are required by Vermont law to implement and continually update the standards for student performance and methods of assessment, and "The standards shall be rigorous, challenging, and designed to prepare students to participate in and contribute to the democratic process and to compete in the global

marketplace." 16 VSA 164(9). Allowing separate and lesser standards for private schools means students with disabilities who are placed in these private schools by their LEAs will not have access to the equitable opportunities to which they are entitled under federal law.

B. **The Vermont Constitution requires that the rules approved by the state board for voucher-funded private schools must be the same as the rules for public schools.** The rules you are now considering are an effectuation of statute. However, statute is an effectuation of our Vermont constitution. Article seven of our Vermont Constitution states "That government is, or ought to be, instituted for the **common benefit,** protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community." As defined by the Brigham case, public education is instituted for the common benefit of all of us, and public education dollars should not be used for the particular advantage of any set of people who are a part only of our communities. Allowing any private school to receive tax dollars from the public education fund is simply a means to the end of equal public education. These public education tax dollars cannot be used for private purposes. Approving separate and unequal rules for taxpayer-funded private schools is a violation of this constitutional command.

C. **Since the 80's, the state board raised standards for public schools, but left students in voucher-private schools behind, under separate and lower standards.** This denies students in those private schools of equitable opportunity.

Vermont did not always have such separate and unequal standards for taxpayer-funded private and public schools. For example, in 1982, 16 V.S.A. § 906 was amended to read:

> § 906. COURSE OF STUDY
> (a) In public schools, approved and reporting private schools and in home study programs, learning experiences shall be provided for pupils in the minimum course of study.
> (b) For purposes of this title, the minimum course of study means learning experiences adapted to a pupil's age and ability in the fields of:
>
> (1) Basic communication skills, including reading, writing, and the use of numbers;
>
> (2) Citizenship, history, and government in Vermont and the United States;
>
> (3) Physical education and principles of health including the effects of tobacco, alcoholic drinks, and drugs on the human system and on society;

(4) English, American and other literature; and
(5) The natural sciences.

Note that at this time, the same standards were applied to all taxpayer-funded schools, both public and private. Please note also that the "minimum course of study" lacks references to outcomes related to technology, physical and data sciences, global studies, sex education, and 21st century skills. **A minimum course of study is not aspirational nor transformational; it is a floor. We need to raise the floor to raise performance.**

Since that time, on numerous occasions, the State Board of Education raised the bar for public schools by imposing more expansive standards for them. However, **it left students in private schools behind, including in settings with outdated and lower minimum expectations and no transparency,** as well as no clear right to due process for students (as opposed to schools) and fewer constitutional protections.

Same dollars, same rules used to be expected. It should be again, to protect children in these private settings, just as we do in public settings.

D. A lower, outdated, separate, and unequal standard for taxpayer-funded private schools disadvantages all students in these schools and undermines civic unity.

All the public school standards the state board has adopted over the years, all the emphasis on preparing youth for both civic and economic life: these are not just good ideas and worthy goals for our students. **They also are binding mandates for all students in schools funded by our public education fund, because our constitution requires equitable education opportunities for all students, including in the taxpayer-funded private settings the state allows to be maintained as an alternative to public schools in every town.**

Although standards for public schools have been raised and modernized, a dated "minimum course of studies" remains the standard (albeit a low one) for private schools that are funded by public education dollars in Vermont. This separate and unequal lower standard for private schools raises questions about whether students in those schools have access to the same rich, future-oriented and civic sets of experiences to which students in public schools are entitled. Consider:

1. Some schools choose to not teach a rich and representative history, in one case because –as the head of school said– their students are "mostly white." This deprives students of the opportunity to learn about the richness and breadth of the

American experience, or even about how racism and antisemitism have been exploited to preserve advantage. Given this, how will students learn to live constructively in the more diverse communities of our future, or in a pluralist democracy?

2. How can children be prepared for a future in which comfort with math and science are highly valued, when private schools are not required to provide access to advanced math or physical science?
3. What is the long-term consequence, especially in more rural areas with lower population density, of allowing families to divert public education dollars to private schools that teach that: "God created the heavens and the earth in six literal days" or that "reject the man-made theory of evolution occurring over millions of years?" How does this not drive fragmentation and segregation based on religious identity?[1]
4. What is the consequence of diversion of precious public education dollars, as we currently do, to schools that teach that "God created man and woman in His own image, and instituted marriage between one biological man and one biological woman (Gen. 2:18-24)" or that equate "homosexuality" and "bisexuality" to crimes like incest and bestiality? What is the consequence of public education dollars being used to promote one faith practice while denigrating another? What is the consequence of a system that allows diversion of public tax dollars to private schools that use a curriculum that suggests slavery is not so bad if it brought people to religion, as one popular curriculum does? **The consequences are not benign. These practices foster fear, hatred and violence against people who are entitled to dignity and protection under the Vermont constitution.**
5. How can children be prepared to collaborate in civic life when they are educated in private schools that make statements or require signing of pledges that are openly hostile or censorious towards entire groups of children, whether they are children with disabilities, children of other faiths, or people of a certain gender?
6. How can parents know if kids are prepared for college and careers, let alone civic life, if there is **no public data** on the performance of students in the private school their child attends?

E. <u>Given the lack of transparency for voucher-funded private schools, parents, communities and the state have no way of evaluating whether students are receiving education that is comparable to that provided by public schools.</u>

[1] It goes without saying that this is also unaffordable, because it compels taxpayers across the state to support more small schools at higher per pupil cost, to ensure kids have access to a school.

In **addition to concerns about what students learn under the lower standards applied to private schools, taxpayers have no way of knowing how well they are learning in these environments.** By law, these private schools are required to have voucher-funded students take the same tests administered to students in public schools. However, none of this data is public. When you look at the data snapshots on the VT Agency of Education website**,** you'll find data on multiple aspects of school quality for every public school in the state. However, **there is no information available at all for students enrolled at taxpayer expense in private schools,** even at the district level.

The last time private school data was available, the performance of the four historical academies on average was almost identical to the overall scores for all students. This was true despite the use by some of these academies of admissions procedures that in national research have been demonstrated to suppress enrollment of less-advantaged students, including economically disadvantaged students and students with disabilities.

No data is currently available for smaller voucher-funded private schools. **Despite numerous records requests of the AOE, some dating back to last winter, legislative colleagues have been unable to obtain data related to student performance in private schools.** I would be happy to share these requests with you.

However, I do have access to assessment data from prior to 2015 for the four biggest private academies- the historical academies. Three of these historical academies were incorporated by the legislature for the purpose of public education. Data for the historical academies that are now public schools are public. Data for the four historical academies used to be public. These data below are for Thetford Academy, Lyndon Institute, St. Johnsbury Academy and Burr and Burton. These data suggest the same variability we see in public schools also exists in independent schools that are funded by taxpayers. Other data I have seen suggests that performance in the smaller private schools is weaker on average than at the larger academies, something interested parties have been unable to explore because the AOE has not made this data available in response to requests.

For this table below, created in 2015, the AOE converted scores on the Smarter Balanced assessment to "z scores," which measure how much the average score on a given test in a given school varies from the average score for schools overall. This conversion gives us a way to compare across schools with different grade levels in terms of how they score compared to schools on average. Two of the historical academies scored above average and two scored below average for schools overall. As a group, their scores were basically identical to the average scores for the state overall.

School	Z score average (negative is below average, positive is above average)	Z score ranking (out of 269, higher = higher scoring)
Lyndon Institute	-0.59	55
Burr And Burton Academy	-0.23	109
Thetford Academy	0.44	174
St. Johnsbury Academy	0.60	193

Again, at present, test scores for taxpayer-funded students in private schools are **not available**. And, the scores of the private sector as a whole, separate from the public sector overall, have never been publicly reported. **This means taxpayers have no evidence to speak to the outcomes of students in taxpayer-funded private schools**. National data suggest that once researchers control for demographics, private schools underperform relative to public schools. Taxpayers have a right to know if that is true in Vermont as well.

F. <u>The potential harm caused by lower standards for taxpayer-funded private schools outweighs any hypothetical risk of expecting them to provide an education that meets public education standards at a minimum.</u>

Lobbyists and others have argued that requiring private schools that get public education dollars to follow public school rules would destroy those schools.

I am the elected state representative from Windsor-Orange 2, a district that is home to the only two private independent schools in the state that have committed to meeting Vermont's education quality standards. One of these schools, Thetford Academy, is the only private school in the state that has consistently committed to a public mission– to a role in lifting up the **entire community of children,** and not just some children– and it has done so while following public school rules and embracing open enrollment. As seen in the data above, it held true to this mission while posting above average results. It succeeded in doing so without excluding students and while embracing the challenge of providing a robust and representative curriculum, as do public schools. It did this while serving a disproportionate number of students with disabilities from neighboring towns, as many public schools do. Thetford Academy is proof that requiring taxpayer-funded private schools to follow the same rules and to be open-enrollment does not represent a threat to these schools. Thetford Academy is proof that private schools can be inclusive and still be excellent. In fact, **requiring other private schools to meet higher**

standards, practice open enrollment, and provide greater transparency would likely increase the quality of the private programs these schools offer at taxpayer expense.

At the most basic level, data on performance in private schools must be transparent. Public budgets are available for public review and vote, and all public school performance data is presented online in AOE data portals, alongside demographic information on students. **All schools that are ostensibly "meeting EQS" must have their performance data published through the same reporting systems as public schools.** This is how we can attempt to ensure that students in voucher-funded private schools have access to the same quality of opportunity as students in public schools.

F. **Any system that uses public education dollars to fund private schools that cull students they don't want to serve is inherently unjust, and harms both students and inclusive schools on which most students depend.**

A system that makes parents pay education property tax for private schools their children would not be allowed to attend is unjust. Taxpayer-funded private schools must also practice open enrollment. **So long as private schools choose their students using tools like test scores, grades, faith pledges, discipline records, mental health records, and interviews, they are curating enrollment – culling students and families they see as undesirable – in ways that are inconsistent with the Education Quality Standards and the state's constitutional commitment to giving every child a fair chance.** Students who "aren't a good fit" because of political views, demeanor, disruption, lower grades or test scores, inability to pay additional fees, pregnancy, discipline, and so on can be excluded, even if these characteristics are correlated with eligibility for IEPs, religion, socioeconomic status or race. Even the existence of admissions devices like these has been proven to segregate students in a community, including based on wealth, race, identity and religion, and depriving our state's children of equal access and opportunities to build the habits of democratic citizenship. As I mentioned in previous public comment to the state board, this is why California prohibits charter schools from requesting information other than name and contact information prior to enrollment. Requesting more has been shown to suppress enrollment of marginalized students.

By permitting voucher-based sorting and culling, the State Board enables social and economic sorting and polarization. It fosters a parallel set of publicly-funded but unaccountable private institutions that undermine shared opportunity and a shared future. This segregation is particularly dangerous to the goals of giving everyone a fair chance and affordability in rural states like Vermont, because most Vermont communities do not have enough students to support more than one robust school at an affordable cost.

The lack of rules abets creation of local, private monopolies that may or may not serve a public purpose.

Data cleaned a few years ago by then Dep. Sec. Bouchey found that while 49% of students in tuition voucher towns attend public schools, 59% of students who are economically disadvantaged in these towns attend public schools, and 69% of students with disabilities in these towns are placed in public schools. This suggests that some **voucher towns depend on public schools operated by nearby towns to serve a disproportionate number of their disadvantaged students, while diverting tax dollars and advantaged students to private settings.**

As one proponent of vouchers told me a few weeks ago, "why should my kid have to go to school with those kids?" Our failure to require open enrollment means we will gut the public or inclusive schools on which the majority of Vermont children depend to fund private schools for people who don't want their kids going to school with "those kids," whomever those kids may be. Instead of fostering community, we are incentivizing people to opt out on common cause with their neighbors.

Given that district funding is now weighted to support students who are disadvantaged but tuition vouchers are not, Bouchey's statistics above also suggest that our voucher system effectively overfunds private schools relative to public schools. Raising standards for private schools and requiring open enrollment would be a small step towards rectifying this injustice.

G. Vermont's failure of expectation

To understand our current failure of expectation for taxpayer-funded private schools, consider the inverse. If these rules are truly so devastating to private schools that take public education dollars, why do we apply them to public schools? Why did some of the same people who now argue so vociferously to have private schools exempted from standards also work so hard to develop and apply these same rules and standards to public schools? What if we in the legislature said that "same dollars, same rules" should mean that public schools only have to follow the rules that apply to private schools? What if the state board decided that because the education quality standards are too onerous to impose on private schools, we should not impose them on public schools either? What would be the consequence?

Anyone who advocates for tight rules on public schools but lesser regulation on private schools that receive vouchers from the public education fund is enabling,

wittingly or unwittingly, overt regulatory capture to protect a private benefit at taxpayer expense. In contrast, public education is a public good.

In its decision in Brown v. Board of Education, the US Supreme Court concluded that denying student entry to the publicly-funded schools other students attend, because they are Black, "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." In Vermont, because of those who would turn public education into a private benefit, we now fund private schools that are openly homophobic and transphobic, which have refused to hire staff who they know are gay or lesbian, and who have suggested to the legislature that they should not have to teach a representative curriculum because their students are mostly "white," as if racism has not played a role in preserving economic advantage throughout our history. We fund schools that reject students using tools and measures that are closely correlated with socioeconomics and disability status. We fund out-of-state private schools that don't serve any students with disabilities or provide civil rights protections to LGTBQ students. We fund an in-state private school that went to court to assert its right to reject students with disabilities, based on "standards" set by the school, even when students were previously and successfully educated alongside peers of the same age. We fund another private school that said the reason it did not previously provide disability services is that it is a college-prep program, as if having a disability means college is not in your future. In all these cases, our tax dollars are being used to send a powerful message about who these schools feel are inferior– a message that affects hearts and minds in ways that are difficult to undo. These voucher-funded private schools can do these harms because they are not held to the same standard as public schools.

Some of the work ahead belongs to the legislature, but some of it belongs to the state board of education, which must protect our shared public interest and the value and rights of all Vermont children, and not just narrow private interests.

The state board should not set standards that are inconsistent with the rights of students with disabilities. And, no private school should receive public education dollars unless it commits to open enrollment, conforms to the same education quality standards that apply to public schools, embraces a truly public mission, and has fully transparent data as do public schools.