

Committee Report

CONSENT CALENDAR

March 23, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Education to which was referred HB
215,**

**AN ACT permitting school districts to contract with
independent schools and private schools. Having
considered the same, report the same with the following
resolution: RESOLVED, that it is INEXPEDIENT TO
LEGISLATE.**

Rep. Rick Ladd

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Education
Bill Number:	HB 215
Title:	permitting school districts to contract with independent schools and private schools.
Date:	March 23, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill was submitted to permit a school district to contract with an independent school or private school in another state. After committee review, it has been determined that inserting “independent school” into RSA 194:22 is unneeded as this section of law already includes the term “academy,” that means an “independent school” that may contract with one or more school districts to provide educational services.

Vote 20-0.

Rep. Rick Ladd
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Education

HB 215, permitting school districts to contract with independent schools and private schools.
INEXPEDIENT TO LEGISLATE.

Rep. Rick Ladd for Education. This bill was submitted to permit a school district to contract with an independent school or private school in another state. After committee review, it has been determined that inserting “independent school” into RSA 194:22 is unneeded as this section of law already includes the term “academy,” that means an “independent school” that may contract with one or more school districts to provide educational services. **Vote 20-0.**

Original: House Clerk
Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on HB 215

BILL TITLE: permitting school districts to contract with independent schools and private schools.

DATE: March 4, 2021

LOB ROOM: 201/203

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Ladd

Seconded by Rep. Boehm

Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Barbara Shaw, Clerk



2021 SESSION

Education

Bill #: HB215 Motion: ITL AM #: _____ Exec Session Date: 3-4-2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Ladd, Rick M. Chairman	✓		
Cordelli, Glenn Vice Chairman	✓		
Boehm, Ralph G.	✓		
Allard, James C.	✓		
Lekas, Alicia D.	✓		
Moffett, Michael	✓		
Hobson, Deborah L.	✓		
Andrus, Louise	✓		
Ford, Oliver J.	✓		
Layon, Erica J.	✓		
Soti, Julius F.	✓		
Myler, Mel	✓		
Luneau, David J.	✓		
Shaw, Barbara E. Clerk	✓		
Cornell, Patricia	✓		
Tanner, Linda L.	✓		
Ellison, Arthur S.	✓		
Mullen, Sue M.	✓		
Ley, Douglas A.	✓		
Woodcock, Stephen L.	✓		
TOTAL VOTE:	20	0	

Hearing Minutes

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON HB 215

BILL TITLE: permitting school districts to contract with independent schools and private schools.

DATE: February 23, 2021

LOB ROOM: 201/203 **Time Public Hearing Called to Order:** 12:00 PM

Time Adjourned: 12:15 PM

Committee Members: Reps. Ladd, Cordelli, Shaw, Boehm, Allard, A. Lekas, Moffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornell, Tanner, Ellison, Mullen, Ley and Woodcock

Bill Sponsors:

Rep. Ladd

Rep. Steven Smith

Rep. Cordelli

Rep. Allard

Rep. Boehm

Rep. A. Lekas

Rep. O'Hara

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Rick Ladd – Bill Sponsor

- Changes literary institution to independent school and private school
- Change of wording to “private” includes religious institution as recently approved by Supreme Court decision
- Allows districts

Jody Underwood – Self- Supports

- Until clear in law definition can be misinterpreted

Barrett Christina – NHSBA – Opposed

- Why is this necessary
- RSA 193 BE refers to this already
- Doesn't understand need

Carl Ladd – NHSAA- Opposed

- Contracts with independent schools would not be accountable to the tax payers
- Ask that this be opposed – ITL
- Local taxes to independent schools would questionably be held accountable?m
- Special ed to IDEA compliance they may or may not be able to adhere to rules so this legislation could be questionable for compliance and accountability

Respectfully submitted,

Rep. Barbara Shaw, Clerk

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING on Bill # HB 215
BILL TITLE: permitting school districts to contract with
DATE: 2-23-2021 independent schools and
private schools

ROOM: 201-203

Time Public Hearing Called to Order: 12:00 noon

Time Adjourned: 12:15 PM

(please circle if present) all present

Committee Members: Reps. Ladd, Cordelli, Shaw, Boehm, Allard, A. Lekas, Moffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornell, Tanner, Ellison, Mullen, Ley and Woodcock

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

① Rick Ladd - sponsor
• changes literary institution to independent school and private school
• change of wording of "private" includes religious ^{institution} as recently approved by Supreme Ct decision
• allows districts

② Jody Underwood - self-Croyden NH
• supports bill
• until clear in law definitions can be misinterpreted

③ Barrett Christina - opposes - NH SBA
• why is this necessary
• RSA 193 3E refers to this already
• doesn't understand the need

④ Carl Ladd - NH SBA - opposes
• contracts with independent schools would not be accountable to the taxpayers.

- ask that this be appased - I TL
- local taxes to independent schools would questionably be held accountable?
- special ed & IDEA compliance they may or may not be able to ~~to~~ adhere to rules so this legislation could be questionable for compliance and accountability.

Respectfully submitted
Rep. Barbara Shew, Clerk

13/11

House Remote Testify

Education Committee Testify List for Bill HB215 on 2021-02-23

Support: 4 Oppose: 83 Neutral: 0 Total to Testify: 4

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Underwood, Jody	Croydon, NH jodysun@gmail.com	An Elected Official	Myself	Support	Yes (3m)	2/21/2021 6:00 PM
Christina, Barrett	Concord, NH bchristina@nhsba.org	A Lobbyist	NH School Boards Association	Oppose	Yes (2m)	2/22/2021 10:01 AM
Ladd, Carl	Northumberland, NH carl@nhsaa.org	A Lobbyist	New Hampshire School Administrators Association	Oppose	Yes (2m)	2/19/2021 2:40 PM
Cann, Emily	Sanbornton, NH emily_cann@hotmail.com	A Member of the Public	Myself	Oppose	Yes (0m)	2/22/2021 10:40 PM
Jakubowski, Deborah	Loudon, NH Dendeb146@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:33 PM
Ingraham, Sheryl	Concord, NH sheryl.ingraham@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 10:57 PM
Spencer, Rob	Concord, NH kentstusa@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:13 PM
Spencer, Louise	Concord, NH lpskentstreet@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:14 PM
Greenwood, Nancy	Concord, NH nancgreenwood@yahoo.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:43 PM
Bourassa, Cheryl	Concord, NH cbourassa59@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:51 PM
Briggs, Ron	Concord, NH Rongb1950@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:54 PM
Perencevich, Ruth	Concord, NH rperence@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 9:12 PM
Koch, Helmut	Concord, NH helmut.koch.2001@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:19 PM

Hinebauch, Mel	Concord, NH melhinebauch@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:20 PM
Jones, Stephanie	Bedford, NH stephaniermjones@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:38 PM
Mooney, Bridget	Wilton, NH bridget@moonchick.com	A Member of the Public	Myself	Oppose	No	2/22/2021 11:19 PM
Platt, Elizabeth-Anne	CONCORD, NH lizanneplatt09@gmail.com	A Member of the Public	Myself	Oppose	No	2/23/2021 6:41 AM
Hawkins, Brian	Concord, NH bhawkins@nhnea.org	A Lobbyist	NEA-NH	Oppose	No	2/23/2021 7:56 AM
Reardon, Donna	Concord, NH Bugs42953@aol.com	A Member of the Public	Myself	Oppose	No	2/23/2021 8:12 AM
Downing, George	Keene, NH Gdowning@sau29.org	An Elected Official	Myself	Oppose	No	2/23/2021 8:51 AM
Dontonville, Roger	Enfield, NH rdontonville@gmail.com	An Elected Official	Myself	Oppose	No	2/23/2021 8:22 AM
Cappiello, Mary Ann	Stratham, NH cappiellomaryann@aol.com	A Member of the Public	Myself	Oppose	No	2/23/2021 7:43 AM
Ellermann, Maureen	CONCORD, NH ellermannf@aol.com	A Member of the Public	Myself	Oppose	No	2/23/2021 7:55 AM
Clark, Denise	Milford, NH denise.m.clark03055@gmail.com	A Member of the Public	Myself	Oppose	No	2/23/2021 8:28 AM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	2/23/2021 8:34 AM
Henrichon, Margaret	Bedford, NH mhenrichon@comcast.net	A Member of the Public	Myself	Oppose	No	2/23/2021 9:03 AM
Chase, Wendy	Rollinsford, NH wendy.chase@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/23/2021 9:10 AM
Vogt, Robin	Portsmouth, NH robin.w.vogt@gmail.com	A Member of the Public	Myself	Oppose	No	2/23/2021 9:23 AM
McConnell, Liz	BRENTWOOD, NH lizmc99@yahoo.com	A Member of the Public	Myself	Oppose	No	2/23/2021 8:55 AM
Robbins, Annie	Wakefield, NH anniemrobbins@gmail.com	A Member of the Public	Myself	Oppose	No	2/23/2021 1:10 PM
McBeath, Rebecca	Portsmouth, NH BMcB@comcast.net	An Elected Official	Myself	Oppose	No	2/23/2021 11:35 AM

Pelkey, Mary	Warner, NH, NH mar.pelkey@gmail.com	A Member of the Public	Myself	Oppose	No	2/23/2021 10:54 PM
Mower, Robin	Durham, NH melodyofharpists@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 10:06 AM
Pugh, Barbara	Amherst, NH barbara.pugh@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 10:59 AM
Frew, Jerry	Concord, NH jerry@nhsaa.org	A Lobbyist	NHSAA	Oppose	No	2/22/2021 11:07 AM
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 11:17 AM
Jones, Andrew	Pembroke, NH arj11718@yahoo.com	A Member of the Public	Myself	Oppose	No	2/22/2021 11:26 AM
Keeler, Margaret	New London, NH peg5keeler@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 6:33 PM
Hamblet, Joan	Portsmouth, NH joan.hamblet@leg.state.nh.us	A Member of the Public	Myself	Oppose	No	2/22/2021 8:28 PM
Falk, Cheri	Wilton, NH Falk.cj@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:34 PM
Lindpaintner, Lyn	Concord, NH lynlin@bluewin.ch	A Member of the Public	Myself	Oppose	No	2/22/2021 12:35 PM
Bouchard, Donald	MANCHESTER, NH donaldjbouchard@gmail.com	An Elected Official	Myself	Oppose	No	2/22/2021 12:43 PM
Neville, Betsey	Concord, NH betsey2003@tds.net	A Member of the Public	Myself	Oppose	No	2/22/2021 12:59 PM
blakeney, gordon	Concord, NH rbplease@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 12:59 PM
Thomas, Sally	Bedford, NH Sallythomas@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 1:38 PM
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Oppose	No	2/22/2021 1:46 PM
Lane, Connie	Concord, NH connie.lane@leg.state.nh.us	An Elected Official	Merrimack 12	Oppose	No	2/22/2021 2:18 PM
Vincent, Laura	Loudon, NH lvlauravincen5@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 3:23 PM
Reed, Barbara	N. Swanzey NH, NH moragmcp83@outlook.com	A Member of the Public	Myself	Oppose	No	2/22/2021 4:58 PM

Levesque, Cassandra	Barrington, NH cassandra.levesque@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/22/2021 5:45 PM
Rich, Cecilia	Somersworth, NH cecilia.rich@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/21/2021 11:50 PM
Howland, Curt	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	2/21/2021 7:50 PM
Blanchard, Sandra	Loudon, NH sandyblanchard3@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:11 PM
Babladelis, Ashley	Concord, NH ash.hatch@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:22 PM
Torpey, Jeanne	Concord, NH jtorp51@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 8:39 PM
Corell, Elizabeth	Concord, NH Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:57 PM
Damon, Claudia	Concord, NH cordsdamon@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 9:03 PM
Dargie, Paul	MILFORD, NH pauldargie@gmail.com	An Elected Official	Myself	Oppose	No	2/21/2021 9:36 PM
Dewey, Karen	Newport, NH pkdewey@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 9:41 PM
Stevens, Representative Deb	Nashua, NH debstevens4ward7@gmail.com	An Elected Official	My 10K constituents	Oppose	No	2/21/2021 10:16 PM
Wells, Ken	Andover, NH kenwells3@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:26 PM
Bartlett, Rep Christy	Concord, NH christydbartlett@gmail.com	An Elected Official	Merrimack 19	Oppose	No	2/21/2021 10:27 PM
Wells, Lee	Andover, NH leewells.locustfarm@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:31 PM
Taylor, Gale	Concord, NH galeforcefacilitators@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:33 PM
Cutshall, Catherine	Bedford, NH vivadofamily@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 5:37 AM
Vivado, Mauricio	Bedford, NH maumajo@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 5:38 AM
Fenner-Lukaitis, Elizabeth	Warner, NH glukaitis@mcttelecom.com	A Member of the Public	Myself	Oppose	No	2/22/2021 6:26 AM

Podlipny, Ann	Chester, NH apodlipny57@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 6:38 AM
Zaenglein, Barbara	Amherst, NH bzaenglein@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:12 AM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 7:14 AM
Rettew, Annie	CONCORD, NH abrettew@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:43 AM
Smith, Sara	Pembroke, NH sara.rose.ssmith@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:50 AM
Carole, Kimberly	Bedford, NH Mskimberlycarole@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:12 AM
Gericke, Carla	Manchester, NH carlagericke@gmail.com	A Member of the Public	Myself	Support	No	2/22/2021 8:15 AM
Petrucelli, Charles	Webster, NH chasmaxpet@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:57 AM
Gilman, Rep. Julie	Exeter, NH julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Oppose	No	2/22/2021 9:12 AM
Spielman, Kathy	Durham, NH jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 9:26 AM
Spielman, James	Durham, NH jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 9:26 AM
Mangipudi, Latha	Nashua, NH Latha.mangipudi@leg.state.N.H.us	An Elected Official	Hills 35	Oppose	No	2/22/2021 9:46 AM
Carter, Lilian	Deering, NH lcarter0914@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:46 AM
Wyatt, Timothy	HUDSON, NH timwyatt1@juno.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:54 AM
Donovan, Julie	BEDFORD, NH julie.donovan@juno.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:56 AM
Bates, David	Warner, NH dbates3@yahoo.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:33 AM
Nardino, Marie	Andover, NH mdnardino@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 5:17 PM
Bruce, Susan	Concord, NH susanb.red@mac.com	A Member of the Public	Myself	Oppose	No	2/21/2021 2:15 PM

Johnson, Sara	Warner, NH nhchicagocubfan@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 4:12 PM
Hamer, Heidi	Manchester, NH heidi.hamer@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/18/2021 6:07 PM

Testimony

Archived: Tuesday, April 6, 2021 9:04:21 AM
From: Jody Underwood
Sent: Sunday, February 21, 2021 6:46:19 PM
To: ~House Education Committee
Subject: testimony for HB 215
Importance: Normal

My name is Jody Underwood. I am vice chair of the Croydon school board and am representing myself today.

My town was a defendant in the court case that ultimately led to the passage of the so-called 'Croydon Bill'. I participated as the chair of the school board. During that case, the presiding judge looked at the phrase 'including, but not limited to' in an RSA, and 'interpreted' it to mean 'limited to'.

What that experience taught me is that until the legislature reins in the judiciary's ability to redefine common English words to rationalize the outcomes it prefers, there's really not much point in fussing over the words of statutes.

But if we're going to fuss over words, it would be a mistake to take a phrase (like 'literary institution') that was clear until the court decided to arbitrarily interpret it to exclude private schools, and replace it with a phrase that would exclude everything *but* schools — because as the past year has demonstrated vividly, having alternatives to the traditional schooling model is essential to the resilience of our society.

I support HB 215, but if there's a chance to amend it, I would ADD "private and independent schools" as an *additional* example, ending with the original "or other literary institution" to keep it in the general sense that was intended.



Statement by Gilles Bissonnette, Legal Director of the ACLU-NH
House Education Committee
House Bill 215
February 23, 2021

I am the Legal Director of the American Civil Liberties Union of New Hampshire (ACLU-NH)—a non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. On behalf of the ACLU-NH, I appreciate the opportunity to testify today in opposition to HB215. HB215 appears to allow public funds to be used for religious purposes by a private religious educational institution that contracts with a school district and therefore, upon approval of the State Board, becomes “a high school maintained by the [school] district” under RSA 194:22. As a result, HB215 violates Part I, Article 6 and Part II, Article 83 of the New Hampshire Constitution.

The New Hampshire Constitution mandates strict separation of church and state, and includes explicit prohibitions on using taxpayer dollars to support religious educational activities. Part I, Article 6 of the New Hampshire Constitution states, “[N]o person shall ever be compelled to pay towards the support of the schools of any sect or denomination.” Part II, Article 83 also states, in part, “Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination.” This language could not be clearer in barring HB215’s transfer of public funds for religious uses. Indeed, these provisions were specifically crafted to preserve our freedom to live in a state where the government is not entangled with matters of faith—including religious education—which are properly reserved for individuals, families, and religious communities.

Given the clarity of these Constitutional provisions, the New Hampshire Supreme Court has interpreted these provisions as strictly prohibiting any diversion of tax funds that could be used to support religious instruction. The Court has even gone so far as to conclude that the government cannot circumvent these prohibitions by “do[ing] indirectly that which it cannot do directly.” See *Burrows v. City of Keene*, 121 N.H. 590, 597 (1981). Thus, not only are direct disbursements from public coffers for the purpose of religious education barred, but the government is prohibited from enacting creative programs that indirectly do so.

Several cases analyzing these provisions under the New Hampshire Constitution are instructive:

- ***Opinion of the Justices (Choice in Education)*, 136 N.H. 357 (1992)**: In this case, the New Hampshire Supreme Court invalidated a proposed school-voucher program. That program would have allowed parents dissatisfied with their child’s education to enroll the child in “any other state approved school,” including a religious school. The school district where the child resided would then have been required to pay part of the new school’s tuition.

The Court pronounced, “[o]ur constitution . . . recognizes the fundamental separation between church and state.” The Court then ruled that the proposed voucher program “violate[d] the plain meaning of part I, article 6” of the State Constitution. The Court emphasized that, under the proposed program, “[n]o safeguards exist[ed] to prevent the application of public funds to sectarian uses.” Payments by school districts under the voucher program would have “constitute[d] an unrestricted application of public money to sectarian schools.” The Court also noted that “sectarian schools” are “a class appearing to predominate among the nonpublic schools.”

- ***Opinion of the Justices, 109 N.H. 578 (1969)***: In this case, the New Hampshire Supreme Court struck down legislation that would have authorized local governments to “grant a tax exemption of \$50.00 per year on the residential real estate of any person having at least one child attending a nonpublic school.” As the Court explained, the program violated Part II, Article 83 because “[i]t would make available to the parents funds which they could contribute directly to the nonpublic school, including parochial schools, without restricting the aid to secular education.” The Court added: “[T]he amount of \$50.00 may seem small, yet if the principle were upheld, the amount could be increased to a point whereby it could be used as a means of fully supporting such schools.”

The unmistakable takeaway from these two opinions is that the New Hampshire Supreme Court has interpreted these specific state constitutional provisions robustly separate and apart from whatever independent protections the federal constitution may provide.

The U.S. Supreme Court’s 2017 decision in *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012 (2017), does not change this result as to HB215’s constitutionality as drafted. *Trinity Lutheran* was narrow and limited to far different circumstances. There, the Court held that a state violated the federal Free Exercise Clause by denying a church-operated preschool—solely because of its religious status — a grant to purchase a rubber surface for its playground. The record in *Trinity Lutheran* contained no evidence that the playground was used for religious activity. Thus, the Court strictly limited the scope of its holding: “This case involves express discrimination based on religious identity with respect to playground resurfacing. We do not address religious uses of funding or other forms of discrimination.” Here, unlike *Trinity Lutheran*, the funds allocated under HB215 could go directly to religious uses.¹

The U.S. Supreme Court’s 2020 decision in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), also does not change this analysis as to HB215’s constitutionality as drafted. In *Espinoza*, the Court held that it violated the Free Exercise Clause for a state to disqualify sectarian schools from receiving the benefit of a scholarship. But, here, modifying HB215 to ensure that public funds are not put to religious uses would not, unlike *Espinoza*, deprive a student of attendance in violation of the Free Exercise Clause; rather, such a change would merely restrict how the funds are used and serve New Hampshire’s longstanding interest in avoiding state funding of religious educational activities.

Indeed, the First Circuit Court of Appeals—including Justice David Souter formerly of the United States Supreme Court—recently agreed with this analysis in *Carson v. Makin*, 979 F.3d 21, 40 (1st Cir. 2020), where that Court held that the requirement in Maine’s tuition assistance program that a private school had to be a nonsectarian school to receive tuition assistance payments did not infringe on parents’ First Amendment free exercise of religion rights because the Court understood the statutory restriction to bar funding for such schools “based on the religious use that they would make of it in instructing children in the tuition assistance program.”

¹ Indeed, in *Locke v. Davey*, 540 U.S. 712 (2004), the U.S. Supreme Court held that a state regulation prohibiting use of state scholarship funds to pursue a degree in theology did not violate the federal Free Exercise or Equal Protection Clauses. Following *Locke*, the *Trinity Lutheran* Court emphasized that, on the specific facts of the case before it concerning a playground, the state had “expressly den[ie]d a qualified religious entity a public benefit solely because of its religious character.” *Locke* was different, explained the *Trinity Lutheran* Court, because the scholarship applicant there “was not denied a scholarship because of who he was; he was denied a scholarship because of what he proposed to do—use the funds to prepare for the ministry.” Here, like *Locke* and unlike *Trinity Lutheran*, if HB215 were to contain provisions ensuring that public funds were not put to religious uses, it would not violate federal Free Exercise principles because it would restrict simply how funds are to be expended.

For these reasons, the ACLU-NH respectfully urges the members of this Committee to vote *inexpedient to legislate* on HB215, as it violates the New Hampshire Constitution as drafted.

NEW HAMPSHIRE SCHOOL ADMINISTRATORS
ASSOCIATION

CHAMPIONS FOR CHILDREN



February 22, 2021

Rep. Rick Ladd, Chair
House Education Committee
Legislative Office Building
Concord, NH 03301

RE: HB215

Dear Chairman Ladd and Members of House Education,

Thank you for taking my testimony regarding HB257. NHSAA is *opposed* to this legislation.

NHSAA is concerned that this proposed legislation does not provide for the transparency and fiscal accountability that should exist in the distribution of public funds from local school districts to other entities.

As we have witnessed most recently with a specific charter school in New Hampshire, significant issues can arise without a strong fiscal reporting and monitoring accountability system in place. In this particular instance there was over \$150,000 in misused taxpayer funds as reported by the Department of Education. This resulted in the rescission of the school's charter, leaving over 40 students and their families scrambling to provide an educational alternative. This was due to poor oversight and a lack of accountability.

Private and independent schools, especially those in other states, are not responsible in any way to the local taxpayers who are funding these proposed contracts. There is no level of direct accountability in the way of publicly available policies, procedures, expectations, requirements, except as they allow.

NHSAA views this legislation as yet another attempt to divert public taxpayer funds to private and independent schools, who operate under significantly different rules than do their public school counterparts. If public schools are to be held to a high level of accountability because they accept public funds, then so should private and independent schools.

NHSAA respectfully requests that you vote HB215 as Inexpedient to Legislate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl M. Ladd', written in a cursive style.

Dr. Carl M. Ladd
Executive Director of NHSAA

Bill as
Introduced

HB 215 - AS INTRODUCED

2021 SESSION

21-0267

06/08

HOUSE BILL **215**

AN ACT permitting school districts to contract with independent schools and private schools.

SPONSORS: Rep. Ladd, Graf. 4; Rep. Steven Smith, Sull. 11; Rep. Cordelli, Carr. 4; Rep. Allard, Merr. 21; Rep. Boehm, Hills. 20; Rep. A. Lekas, Hills. 37; Rep. O'Hara, Belk. 9

COMMITTEE: Education

ANALYSIS

This bill permits a school district to contract with an independent school or private school in this or another state.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT permitting school districts to contract with independent schools and private schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 School Districts; Contracts with Schools. Amend RSA 194:22 to read as follows:
- 2 194:22 Contracts With Schools. Any school district may make a contract with an academy, high
- 3 school, **independent school**, or other [~~literary institution~~] **private school** located in this or [~~when~~
- 4 ~~distance or transportation facilities make it necessary, in~~] another state, and raise and appropriate
- 5 money to carry the contract into effect. If the contract is approved by the state board the school with
- 6 which it is made shall be deemed a high school maintained by the district.
- 7 2 Effective Date. This act shall take effect 60 days after its passage.