STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Orleans Unit **Docket No. 215-12-20 Oscv**

Sara Vitale and Louis Vitale, as parents and next friends of K.V., L.V., and T.V.;
Marisa and Benjamin Trevits, as parents and next friends of V.T., R.T., and E.T.; and
Cindi and Fredrick Rosa, as parents and next friends of E.R. and D.R.,

Plaintiffs,

v.

State of Vermont;
Daniel French, in his official capacity as Secretary of the Vermont Agency of Education;
Vermont State Board of Education;
Windham Northeast Union Elementary School District;
Bellows Falls Union High School District # 27;
Lake Region Union Elementary School District; and
First Branch Unified School District,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

1. Allowing some Vermont children to attend the school of their choice while denying this common benefit to other children violates the "paramount duty to place the means of obtaining instruction and information equally within the reach of all." *Brigham v. State*, 166 Vt. 246, 266 (1997) (quoting Governor Samuel Craft, 1828).

2. Vermont's Town Tuitioning system, begun in the early 1800s, is the oldest publicly funded school choice system in the United States. In nearly 40% of Vermont towns, parents representing 17% of Vermont school children have some form of choice to receive

tuition to send their children to public or independent schools outside their town's public school system. But these benefits are not available to all. This lawsuit is brought on behalf of those children who are not in the lucky 17% of Vermont school children who are offered choice.

3. The plaintiffs are parents who desire a school that best fits the specific needs of their children but are instead automatically shunted into particular schools by nothing more than geography. They bring this action to ensure the educational opportunity and common benefits of Vermont citizenship are extended equally to all the state's children.

COMPLAINT

4. Plaintiffs, Sara and Louis Vitale; Marisa and Ben Trevits; and Cindi and Fredrick Rosa; through counsel, hereby bring this Complaint for Declaratory Judgment against Defendants, the State of Vermont; Daniel French, in his official capacity as Secretary of the Vermont Agency of Education; the Vermont State Board of Education; Windham Northeast Union Elementary School District; Bellows Falls Union District # 27; Lake Region Union Elementary School District; and First Branch Unified School District. Plaintiffs also seek related Injunctive Relief to prevent the continued unlawful actions of the Defendants and allege as follows.

5. Vermont statutes that require only certain Vermont children to attend schools in the district where they reside while allowing other Vermont children to attend virtually any schools of their choice violate the right to equal educational opportunity found in Chapter I, Article 7 and Chapter II, Section 68 of the Vermont Constitution. *Brigham v. State*, 166 Vt. 246, 692 A.2d 384 (1997); *see also Baker v. State*, 170 Vt. 194, 744 A.2d 864 (1999).

PARTIES

6. Plaintiffs Sara and Louis Vitale (the "Vitales") are residents of Athens, Windham County, Vermont. The Vitales have three children: K.V. is a 16-year-old son, L.V. is a 15-year-old son, and T.V. is an 8-year-old daughter. The Vitales have legal authority to make educational decisions on where to send K.V., L.V., and T.V. to school and have financial responsibility for supporting them.

7. Plaintiffs Marisa and Benjamin Trevits (the "Trevitses") are residents of Glover, Orleans County, Vermont. The Trevitses have three children: V.T. is their 16-year-old daughter, and R.T. and E.T. are their 13-year-old twin children. The Trevitses are recently divorced and maintain joint custody of their children. They have legal authority to make educational decisions on where to send V.T., R.T., and E.T. to school and have financial responsibility for supporting their children.

8. Plaintiffs Cindi and Fredrick Rosa (the "Rosas") are residents of Chelsea, Orange County, Vermont. The Rosas have two children: E.R. is a 10-year-old daughter, and D.R. is a 6-year-old son. The Rosas have legal authority to make educational decisions on where to send E.R. and D.R. to school and have financial responsibility for supporting them.

9. The State of Vermont ("Vermont") is responsible for enforcement of its laws, codified in the Vermont Statutes Annotated. It may receive service of process through the Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609.

10. Daniel French, in his official capacity as Secretary of the Vermont Agency of Education (the "Secretary") is responsible to "[s]upervise and direct the execution of the laws relating to the public schools and ensure compliance." 16 V.S.A. § 212. He has the primary

responsibility and practical ability both to inform all Vermont school districts of the laws relating to Town Tuitioning and to ensure compliance with them. He is responsible for executing the policies adopted by the Vermont State Board of Education in the legal exercise of its power. *Id*. He may receive service of process at his business address: 1 National Life Drive, Davis 5, Montpelier, VT 05620.

11. The Vermont State Board of Education ("State Board") is charged with "establishing and advancing education policy" for Vermont and has the authority to adopt rules, pursuant to 3 V.S.A. Chapter 25, as "necessary or appropriate for the execution of its powers and duties." 16 V.S.A. § 164(7). The State Board has the authority to adopt rules relating to Town Tuitioning and to ensure compliance with them. The State Board may receive service of process through its chair, John Carroll, at its business address: 1 National Life Drive, Davis 5, Montpelier, VT 05620.

12. The Windham Northeast Union Elementary School District is responsible for the education of students in the towns of Westminster, Athens, and Grafton, Vermont. Among other schools, it runs the Grafton Elementary School, a public school which serves students in grades pre-K through 6. It provides Town Tuitioning for its students to attend the school of their choice for grades 7 and 8. Students who choose not to participate in Town Tuitioning are sent to neighboring Bellows Falls Middle School. The Windham Northeast Union Elementary School District may receive service of process through its chair, Jack Bryar, at its business address at the Windham Northeast Supervisory Union: 25 Cherry Street, Bellows Falls, VT 05101.

13. Bellows Falls Union High School District # 27 is responsible for the education of students in grades 9-12 who live in Grafton, Rockingham, Westminster, and Athens, Vermont. In grades 9 through 12 all students are required to attend Bellows Falls High School. Bellows

Falls Union High School District # 27 may receive process through its chair, Molly Banik, at its business address at the Windham Northeast Supervisory Union: 25 Cherry Street, Bellows Falls, VT 05101.

14. The Lake Region Union Elementary School District is responsible for the education of students in the towns of Albany, Barton, Brownington, Glover, Irasburg, Orleans, and Westmore, Vermont. Among other schools, it runs the Glover Community School, a public school which serves students in grades pre-K through 8. It may receive service of process through its chair, Amy Leroux, at its business address at the Orleans Central Supervisory Union at 130 Kinsey Road, Barton, VT 05822.

15. The First Branch Unified School District is responsible for the education of students in the towns of Chelsea and Tunbridge, Vermont. It runs the Chelsea Public School, a public school including an elementary, and middle school, which serves students in grades K through 8. It also runs the Tunbridge Central School, a public school which serves students in grades K through 8. It may receive service of process through its chair, Kathy Galluzzo at its business address at the White River Valley Supervisory Union: 461 Waterman Road, Royalton, VT 05068.

FACTUAL ALLEGATIONS

Sara and Louis Vitale

16. Sara and Louis Vitale are the married parents of three children: K.V., L.V., and T.V. Their second child, son L.V., was born with multiple medical and physiological problems, including Arthrogryposis multiplex congenital**,** bilateral club feet, hip dysplasia, malformed rib cage, and severe respiratory disorder. L.V. is wheelchair bound and needs a tracheostomy at

night in order to breathe. He also needs and uses a feeding tube. He cannot scratch his head, go to the bathroom unassisted, or eat without assistance.

17. The Vitales live in the Windham Northeast Union Elementary School District and in the Bellows Falls Union High School District # 27. Specifically, the Vitales live in Athens; therefore, L.V. attended Grafton Elementary School through grade six. The Vitales had constant struggles with the school system and the way it treated L.V. One time L.V.'s para-educator forgot him and left him alone in the bathroom for an hour. Another time, his teachers intentionally left L.V. inside the school with his para-educator while everyone else went outside for a fire drill. The treatment of L.V. by his public school system was appalling. Grafton Elementary treated L.V. as if he were a nuisance and not a child. If there was a problem, the school would simply isolate L.V. rather than working with L.V. and his family to solve the problem.

18. The default public school for students living in Athens in 7th and 8th grades is Bellows Falls Middle School.

19. When L.V. was entering 7th grade, he visited Bellows Falls Middle School. Even though the Grafton school principal had contacted Bellows Falls Middle School on behalf of the Vitales weeks before their visit and informed the school of L.V.'s disabilities, his experience there was unsettling. L.V.'s wheelchair would not fit through the door of the very first classroom visited. At the end of the day, during a school assembly L.V. was attending, the Vitales were informed that L.V. had to leave early because the district was short on wheelchair buses, and transporting L.V. would disrupt their regular route. The Vitales declined, keeping L.V. at the assembly. The Vitales transported L.V. home themselves, but they were concerned about the attitude of the school officials, who, even though they had been notified weeks earlier, had not

bothered to make appropriate arrangements to make L.V. feel welcome.

20. Thankfully, the Windham Northeast Union Elementary School District provides full school choice for 7th and 8th grades.

21. After the disturbing visit to Bellows Falls, L.V. and his parents decided to enroll L.V. in an independent school, Compass School, where L.V. has been happy and comfortable. Compass provided L.V. with his own bathroom, added ramps for wheelchair access, hired staff, and even accommodated L.V.'s needs by processing L.V.'s food, so he can eat at school. Compass School accommodates L.V.'s educational, physical, and emotional needs. As a result, L.V. is thriving at Compass. When an issue arises at Compass, it becomes a community issue that the entire community solves together. Compass treats L.V. as a welcomed member of the school community rather than as an imposition. L.V. loved his 7th and 8th grade years at Compass.

22. But now, L.V. is in 9th grade.

23. Unfortunately, the Bellows Falls Union High School District # 27 denies school choice to 9th through 12th graders.

24. Introducing L.V. to the loving environment and educational resources available at Compass School for free for two years and then ripping that benefit away was cruel and inhumane.

25. The Vitales live on limited income, are receiving Supplemental Nutrition Assistance Program food benefits (food stamps), and are scrimping and saving to pay tuition to keep L.V. at Compass. Forcing them to pay for the same benefit that others receive for free is inherently unequal.

26. In addition, the Vitales are struggling to pay tuition for K.V. to attend 11th grade

at Compass. Having two children at an independent school only compounds the financial problems being caused by this discriminatory treatment.

27. The Vitales' youngest child, T.V., is enrolled in public school at Grafton Elementary, but she, too, is struggling. Currently, the school is failing to provide her with the mental health disability evaluation that she needs. She, too, would gain from the benefit of Town Tuitioning offered to other children in the district and state.

Marisa and Benjamin Trevits

28. Marisa and Benjamin Trevits are the parents of three children: a 16-year-old daughter, V.T., and 13-year-old twins, R.T. and E.T.

29. The Trevitses live in the Lake Region Union Elementary School District. Specifically, the Trevitses live in Glover; therefore, R.T. and E.T. are assigned to attend Glover Community School (K-8). Both E.T. and R.T. used to attend Glover Community School.

30. At about age 11, R.T., whose gender assignment at birth was female, began showing signs of depression, including engaging in self-cutting behavior and self-isolation.

31. The Trevitses decided to enter R.T. into therapy. As a result, R.T. changed his name to a male name, and came out as male.

32. R.T.'s identification as male had devastating results at his assigned school. He was teased, bullied, and shunned. He and his sister, E.T., were forced to sit alone at lunch because the other children would not associate with them.

33. The Trevitses attempted to work with the school administration to end the bullying and isolation, but the assigned school failed to serve R.T. and E.T. in this way.

34. R.T. and E.T. began complaining of headaches and stomach aches, and they stopped attending school regularly. R.T. became suicidal.

35. The Trevitses met with the Lake Region Union Elementary-Middle School Board to request that it provide Town Tuitioning for R.T. and E.T. to attend another school, where they would not be met with bullying and isolation. The school board refused.

36. Therefore, the Trevitses made the difficult decision to pay to send the twins to an independent school, Thaddeus Stevens School, in Lyndon, Vermont.

37. Thankfully, the twins are thriving at Thaddeus Stevens School and are supported by the administrators, teachers, and students. Even though the schoolwork is more challenging than at Glover Community School, their educational achievement has improved. Without the emotional heartache they received at Glover Community School, they can focus on their academics.

38. R.T. is no longer suicidal, and E.T.'s anxiety and stress has also reduced.

39. However, the Trevitses are struggling to pay tuition to Thaddeus Stevens School. They survive on a limited income. Ben is a cheesemaker, and Marisa is a bar manager.

40. The Trevitses need the Town Tuitioning program that other Vermont students receive, so they can make ends meet for their family. Because they are being locked out of the program based on their residency, their children are having to make other sacrifices to attend independent school.

41. Their oldest child, V.T., needs braces on her teeth, but the Trevitses cannot afford them due to the money they are forced to pay in independent school tuition.

Cindi and Frederick Rosa

42. The Rosas are the married parents of a 10-year-old daughter, E.R., and a 6-year-old son, D.R.

43. The Rosas live in the First Branch Unified School District. Specifically, the Rosas live in Chelsea; therefore, E.R. is assigned to attend Chelsea Elementary School.

44. In August 2014, E.R. began attending kindergarten at Chelsea Public School.

45. While E.R. tests above average in both reading comprehension and math, she has a form of aphasia, a speech delay which has required speech therapy.

46. As a result of her speech delay, E.R. was taunted and teased by several students in kindergarten. Understandably, this harassment upset her tremendously, but the other students used her reaction to make fun of her, calling her a "cry baby."

47. E.R. would come home from school visibly upset, and she repeatedly asked not to return to school. E.R. asked her mother why she was broken and not like other kids.

48. A student whose desk was next to E.R. was the worst bully. He threatened to kill E.R.'s dog. He told her he was going to sneak out of his house to do so and that he had killed other dogs before. E.R. was terrified that her beloved dog was going to be killed. Another time, he grabbed E.R. by the throat, leaving scratch marks.

49. The Rosas filed a formal harassment complaint with the principal of Chelsea Elementary School. The principal and other school personnel minimized E.R.'s concerns, and rather than punishing the bully, they punished the victim and moved E.R. to another area in the classroom. That action by her assigned school made E.R. and others feel that she was the one at fault. The teasing and taunting continued.

50. The Rosas appealed to the White River Valley Supervisory Union Superintendent's office. Mrs. Rosa was forced to leave a phone message, and her phone call was never returned.

51. E.R. was evaluated by Chelsea Elementary School, which labeled her as having

"oppositional defiant disorder." However, the Rosas had E.R. evaluated by an independent psychologist, who determined that E.R.'s anxiety was caused by the school and was "environmentally based."

52. By the end of second grade, E.R. was so traumatized by the treatment she had received that she told her mom she would rather die than go back school.

53. As a result, the Rosas decided to home school E.R. because they could not afford to pay tuition to a school that would fit their daughter's needs.

54. Cindi Rosa home schooled E.R. until the fall of 2019. But she was forced to stop homeschooling E.R. because her mother had become seriously ill, and she needed to take care of her at home.

55. The Rosas petitioned the First Branch Unified School District to admit E.R. to the Tunbridge Central School, and the school board agreed, so E.R. now attends Tunbridge.

56. However, some of the same issues E.R. encountered at Chelsea have re-surfaced at Tunbridge. E.R. has developed social anxiety because of what she experienced at Chelsea. One boy and one girl at Tunbridge are now bullying E.R. One day at Tunbridge, E.R. started crying as a result of the teasing. The school's response was victim-shaming: they sent her home. Just a few weeks ago, when Plaintiff Cindi Rosa was picking up E.R. from school, she witnessed E.R. being teased by her fellow students as a "cry baby." The teachers were standing nearby but said or did nothing. As a result of this continued bullying, E.R. has told her parents that she does not want to attend school and that she has no friends at school. E.R.'s parents have talked to school administrators about the problem, but the response was only that they are "getting things in place." They have not informed the Rosas how they plan to stop the bullying.

57. The Rosas have investigated independent schools and have determined that E.R.

would benefit from attending an independent school. However, they are unable to afford school tuition. The Rosas have no choice but to keep E.R. in public school, despite the damage being done to E.R.'s emotional health and academic progress.

58. In addition, the Rosas' son, D.R. is also attending Tunbridge. He is in Kindergarten. He is in speech and occupational therapy, but the Rosas believe that he needs more individualized services, and he would benefit greatly if only he were given the same common benefit of Town Tuitioning given to other students in Vermont.

JURISDICTION, VENUE, & STANDING

59. This Court has jurisdiction under the Declaratory Judgments Act (V.S.A. Title 12, Chapter 167), common law jurisdiction for injunctive relief, and V.R.C.P. 75.

60. Venue is proper in Orleans County, pursuant to 12 V.S.A. § 402.

61. Parents seeking a judicial declaration and injunction to vindicate their children's constitutional rights to equal educational opportunity have standing to pursue their claims. *Brigham v. State*, 2005 VT 105, ¶ 17 (*Brigham II*).

STATUTORY BACKGROUND

62. Vermont has a long history of providing Town Tuitioning since the early 1800s. Tuition payments were recorded in the first State Superintendent's report in 1846.

63. 16 V.S.A § 11 defines "elementary education" as a "program of public school education adapted to the needs of students in prekindergarten, kindergarten, and the first six grades." It defines "high school" as a "program of public school education of six years adapted to the needs of students who have completed their elementary education."

64. 16 V.S.A § 821 gives school districts sole discretion to operate their own elementary schools or pay tuition for students to attend another public or independent elementary school. 16 V.S.A § 821 does not expressly prohibit school districts from both operating a public elementary school and paying tuition for students to attend another public or independent elementary school, but based on information and belief, none do.

65. 16 V.S.A § 822 gives school districts sole discretion to operate their own high schools, pay tuition for students to attend another public or independent high school, or both.

66. According to the Vermont Agency of Education map, attached as Exhibit 1, nearly 100 towns provide town tuitioning, in which parents have a choice where to send their child. The number of towns providing town tuitioning at each grade level is as follows:

Grades K-12:	23 towns
Grades K-8:	2 towns
Grades 4-12:	1 town
Grades 7-8:	4 towns
Grades 7-12:	24 towns
Grades 9-12:	42 towns

COUNT I: VIOLATION OF THE COMMON BENEFITS CLAUSE, VT. CONST. CH. I, ART. 7

67. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

68. "[G]overnment 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, or set of persons, who are a part only of that community . . . ." Vt. Const. Ch. I, Art. 7 (the "Common Benefits Clause").

69. The Common Benefits Clause provides broader rights than the federal cognate Equal Protection Clause. *Baker v. State*, 170 Vt. 194, 201-02 (Vt. 1999).

70. "The affirmative right to the common benefits and protections of government and the corollary proscription of favoritism in the distribution of public emoluments and advantages reflect the framers' overarching objective not only that everyone enjoy equality before the law or have an equal voice in government but also that everyone have an equal share in the fruits of the common enterprise." *Id*. at 208. *Accord id*. at 211 ("equal access to public benefits.").

71. Providing the benefit of Town Tuitioning to students based on the mere fortuity of their residence and denying it to other students like Plaintiffs is patently unfair and violates the Common Benefits Clause.

COUNT II: VIOLATION OF THE EDUCATION CLAUSE, VT. CONST. CH. II § 68

72. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

73. "[A] competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth." Vt. Const. Ch. II § 68 (the "Education Clause").

74. The Education Clause obligates the state to provide "every school-age child in Vermont an equal educational opportunity" and prohibits the state from adopting policies that "deprive[] children of an equal educational opportunity." *Brigham*, 166 Vt. at 249. Education "is a right which must be made available to all on equal terms." *Id*. at 250 (quoting *Brown v. Board of Educ*., 347 U.S. 483, 493 (1954)). "[S]tudents must be afforded equal access to all that our educational system has to offer." *Id*. at 267.

75. "Although there is no fundamental right to an education under the U.S.

Constitution, the Vermont Supreme Court has found such a right in the Vermont Constitution, holding that, 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.* 166 Vt. 246, 256, 692 A.2d 384 (1997)." *Athens School District et al. v. Vermont State Board of Education et al*., Docket No. 33-1-19 Frcv (March 4, 2019) (internal quotations omitted).

76. Because the right to a publicly funded education is a fundamental right, strict scrutiny must apply to any organizational structure that does not provide substantially equal educational opportunity to all Vermont children.

77. The fact that some children may attend a potentially minimally adequate public school for free does not excuse the state from providing equal educational opportunities to all children, including the right to Town Tuitioning. *Brigham*, 166 Vt. at 267 ("We find no authority for the proposition that discrimination in the distribution of a constitutionally mandated right such as education may be excused merely because a 'minimal' level of opportunity is provided to all.").

78. "The distribution of a resource as precious as educational opportunity may not have as its determining force the mere *fortuity* of a child's residence. It requires no particular constitutional expertise to recognize the capriciousness of such a system." *Emphasis in the original. Brigham v. State*, 166 Vt. 246, 265, 692 A.2d 384, 396 (1997)

79. Providing the benefit of Town Tuitioning to students based on the mere fortuity of their residence and denying it to other students like Plaintiffs is patently unfair and violates the Education Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Honorable Court:

1. Declare that the present educational system allowing unlimited Town Tuitioning for some, limited Town Tuitioning for others, and no Town Tuitioning for others violates both Article I, Section 7 and Article II Section 68 of the Vermont Constitution.

2. Enjoin the Defendants from requiring students to attend school in their district and order that the common benefit of Town Tuitioning, found in 16 V.S.A § 821 & 822, be granted to all students in Vermont.

3. Award attorneys' fees and costs, where applicable.

4. Award any and all other relief which this Honorable Court deems just and equitable.

Dated: December 21, 2020

Respectfully submitted,

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Pro hac vice motions to be filed