

# Barstow school choice: Should public tax dollars support private schools?

**The vast majority who attended a virtual forum Sept. 9 say: 'Yes!'**

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Residents of Mendon and Chittenden want to retain Barstow's current open school choice options — as do others nearby who benefit from that choice.

A virtual forum held by the school board via Zoom on Thursday, Sept. 9, drew about 90 attendees, according to Superintendent Jeanné Collins. Nearly all spoke passionately in favor of the status quo.

The Barstow Unified Union School District Board (BUUSD) is made up of the towns of Chittenden and Mendon and operates within the Rutland Northeast Supervisory Union. Barstow Memorial School in Chittenden serves about 240 students in pre-Kindergarten through Grade 8, then families within the two towns can choose any high school for their students to attend grades 9-12 — public or private, in-state or out-of-state — supported by a voucher from the state. Tuition voucher amounts vary slightly. For public schools chosen: the state will award a voucher equal to that school district's average per pupil costs. For private schools: the state will award a voucher worth the average announced tuition for all Vermont public schools (for the 2021-22 school year, it's \$16,842) or the independent school's tuition, whichever is less.

Proponents of the status quo say that the option to send students to independent schools in addition to public schools supports a wider variety of student needs and interests and positively affects property values and population, which in turn supports Barstow.

But the BUUSD board recently questioned the ethics behind such broad school choice and instead floated the idea of limiting choice options to three public schools: Rutland High School, Otter Valley Union High School and Proctor High School. According to district data, 95% of Barstow graduates who chose public schools attend those three. The majority choose Rutland High.

The suggestion to limit school choice to public options and no longer allow families to use state tuition money to send their students to independent schools has drawn fiery reactions from many — especially those who could lose out on tens of thousands of dollars from the state.

## Background

The BUUSD board began to question its open choice policy after an April 19, 2021, ruling by the state Board of Education (BOE), which ordered three school districts to pay tuition for students to attend Catholic schools.

All three cases brought to the BOE were from Rutland and Windsor counties: Paul and Ingrid Gallo challenged Rutland Town School District (part of the Greater Rutland County Supervisory Union) to tuition to Mount Saint Joseph Academy; Joanna and Stephen Buckley challenged Hartland School District (part of Windsor Southeast Supervisory Union) to tuition to New England Classical Academy (in Claremont, New Hampshire); and Lucy and Michael Dunne challenged Ascutney School District to tuition to Kent School (in Kent, Connecticut). A fourth suit by Michael and Nancy Valente challenging Ludlow Mt. Holly UUSD was ultimately dismissed after the school board reconsidered their request and decided to pay tuition to Mount Saint Joseph Academy for the 2020/21 school year.

According to the BOE final decision: "In each of these cases, the appellants asked their respective school district to pay tuition for the 2020/21 school year to the [religious] school attended by their child. In each case, the tuition request was denied by the school district and the appellants paid out of pocket. Each family then appealed to the State Board of Education. Each involved the same legal issue: what are the constitutional parameters, both state and federal, that govern public tuition payments to religious schools?"

School tuition programs are governed by Sections 822 and 824- 828 of Title 16 of the Vermont Statutes. In the April decision, the BOE outlined the options: “To generalize, a Vermont school district must either: maintain a public high school; designate up to three public high schools or approved independent schools for their district and pay tuition for its students to attend those schools; or pay tuition for its students to attend a public high school or a qualifying independent school chosen by the students’ families.”

Section 828 of Title 16, which provides more detail: “A school district shall not pay the tuition of a student except to a public school, an approved independent school, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country.”

### **BOE: can’t compel religion, can’t discriminate against it**

Prior to the April BOE decision, religious schools had been excluded as a school choice option statewide, as it was considered a violation of Article 3 of the Vermont Constitution. (This decision was based on a court case from 1999, Chittenden School District v. Dept. of Education, which prevented the Chittenden Town School District to pay tuition to Mount St. Joseph Academy.)

This provision is referred to (in part) as the “compelled support clause.” Article 3 states: “That all persons have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience.”

The Vermont Supreme Court held in Chittenden that the compelled support clause barred the use of public tuition payments to support religious worship, which includes religious education. Thus, the Court held that the Chittenden School District’s plan to pay tuition to Mount St. Joseph Academy and other sectarian schools, with no restrictions on funding religious education, violated the compelled support clause. In other words, an “unrestricted system lacked adequate safeguards to prevent the use of public funds to support religious instruction and worship” was unconstitutional, the Court held in 1999.

But, importantly, the Vermont Supreme Court did not hold that any tuition payments to religious schools would necessarily violate the compelled support clause. The Court rejected the “assumption that we would conclude that children who attend religious schools may not receive public educational funding, while children who attend public schools may. This is not our ruling. We have determined only that public funds may not pay for religious worship within the meaning of Article 3, wherever it occurs.”

In its April 2021 decision, BOE argued that excluding religious schools would amount to discrimination, citing previous cases, including Trinity Lutheran Church of Columbia, Inc. v. Comer, 2019, where it was deemed that “expressly denying a qualified religious entity a public benefit solely because of its religious character,” was found to be “odious to our Constitution.”

“Chittenden holds, in essence, that the Compelled Support Clause requires a use-based limitation on public tuition payments,” the BOE wrote in their April decision. “It does not prohibit tuition payments to religious schools generally or to any category of religious schools. It only requires sufficient safeguards to ensure that public funds are not used to support religious worship or religious instruction.”

In summary, the BOE decision reads: “No Vermont statute or rule limits the payment of tuition to independent schools based on the schools’ religious affiliation, programming, or instruction. Nothing prevents religious schools in Vermont from qualifying as approved independent schools; one of the schools at issue here, Mount St. Joseph Academy, is an approved independent school in Vermont.”

However, the BOE also expressly stated that its April ruling was not setting precedent for other schools and districts in the state. “The Board offers these observations with the caveat that this is not a rulemaking proceeding and it cannot, in this context, provide any binding direction to school districts,” the decision reads.

### **Back to Barstow**

This past June BUUSD board met to consider adopting a resolution drafted by the Vermont School Boards Association (VSBA), which requested, in part, that the General Assembly “guarantee, through law, that all public and independent schools

receiving public funds adopt and exercise, equal and equitable opportunities in admissions, programs and practices in order to operate in the state of Vermont.”

In reviewing that resolution and the recent BOE decision, the board realized that its current open school choice model may not comply.

While the board voted unanimously to support the VSBA resolution and possibly limit school choice to the three local public high schools, it concluded it was necessary to hear from district residents.

The board sent out a request for feedback via mail, email and online posting to residents of Mendon and Chittenden. The following was posted on the school website, Aug. 24:

“The Barstow School Board would like your input on whether the voters should refine the Barstow School Choice options. More specifically, the change being considered is to limit the options to the three public schools used by 95% of Barstow graduates: Rutland High School, Otter Valley High School and Proctor High School.

“Why?: The Barstow School Board has set a focus on ensuring all students have equitable opportunities to access a rigorous education. The current school choice model of public and private schools does not allow for equitable access for all students,” the announcement read. “Private schools do not enroll students who require services beyond basic education services and many have by-laws that deny access to particular groups of students by such factors as race, ethnicity, gender, gender identity, sexual orientation, language, culture, ability or accessibility needs, socioeconomic status, citizenship, creed, religion, tribal status .... Many private school options are only accessible to families who can pay the difference between the public school tuition amounts and the remainder of charged tuition. This creates inequitable access for Chittenden and Mendon students... Taxes in Chittenden and Mendon currently pay for both private and public school choices with no ability to oversee equitable admissions processes.”

The announcement concluded stating: “Impact: Choosing three public school high school options continues to allow high school choice for Mendon and Chittenden residents while ensuring tax dollars are being spent at schools which are academically and financially accessible for all Barstow students.”

Members of the school board were all in attendance: Brenda Hummel (chair), Robin Crossman, Jacob Powsner, Jessica Quesnel and Ethan Bodin. Each made a brief introduction before opening up the forum to discussion.

Hummel began: “The Barstow unified union school board has set a focus on ensuring all students have equitable opportunities to access a rigorous education. The current system of open school choice raises the question of whether public funds should be expended in support of non-public schools... This is a very complex issue which continues to be discussed at the state level.”

Crossmen added: “I know everybody’s got opinions based on whatever they know so far. And what we want to be able to do is bring voters in Mendon and Chittenden to the same level of knowledge so that we can make an informed decision. All we’re doing is trying to get information. That’s our job to bring this to a discussion ... We’re trying to do the right thing.”

Quesnel summarized: “Ultimately, it’s the voters of Chittenden and Mendon that have the authority in deciding whether or not to restructure school choice and designate these three public schools. The Barstow Board will not be making a decision on this matter. The board is providing the opportunity for the voters to exercise local control over how they want their tax dollars spent. If deemed necessary, the board may move to bring the matter to a town vote. And we will take all the information that we gather here on this forum and all of our other outlets and we’ll see where it goes from there.”

Linda Rice was asked to be the moderator of the discussion. She introduced herself as a former Barstow board member and welcomed the public to join the discussion: “Tonight, we invite you to have a conversation as a community. And the issue ... is simply whether public tax dollars should be sent to non-public schools or non-public institutions, what we might call private schools,” she began. “Why is that an important issue to think about? Because we want to have equity and fairness in the education that we give our children and non-public institutions and schools are not required to accept every student, they can pick and choose. That can create, if not the appearance of unfairness, genuine unfairness...”

## Public comment

Residents of Mendon and Chittenden were given the first opportunities to speak, with each speaker given two minutes to express their thoughts.

Jennifer Beers, a resident of Mendon, was among many who strongly disagreed with the board's points about equity and how the statements were framed.

"Your first point states that private schools do not enroll students who require services beyond basic education. I'd like to just disagree with that statement. Specialized instruction and academic supports are available at the private schools. My daughter has access to smaller class sizes, individualized instruction, and academic support as part of the program that she is attending this year at private school. For the past two years, we have tried to access the same types of supports for her at the public school, we requested those supports and nothing was available because she's considered an atypical student. So the fact is that she's getting increased support by going to a private school, and that we chose to utilize our school choice option because those services were not available for her in public school.

"Your second point says that they deny access to protect particular groups based on race and ethnicity, etc. Again, I would disagree. The school my daughter is attending through a school choice program has more diversity and more inclusive than any other public school options available to her.

"Your third point states that it's only accessible for families with money. Again, I disagree. There are multiple options at multiple price points. And the availability of school choice funding improves student outcomes because the families have the ability to choose," Beers concluded.

Gina Ottoboni, from Chittenden, also called the school board's statements about independent schools "problematic." Adding: "Those statements set up a false dichotomy that public schools are equitable and private schools aren't. And that's not a true statement."

Oliver Olsen, the chair of the State Board of Education and a former legislator involved in the development of Act 46, spoke as a private citizen and homeowner of Mendon, and clarified state laws about discrimination:

"I don't want to weigh in on this as a local issue. But I do want to offer some information to ensure that the public are fully informed," he said. "The first issue is that some of the material that was mailed out suggests that independent schools, many independent schools have practices that discriminate on the basis of race and other protected classes. I can tell you that that is illegal under Vermont law, it is also not permissible under the State Board of Education rules, which reference state law, and as the parent of biracial children, I can assure you that I would personally take exception to the approval of any independent school that had those types of discriminatory practices. So I think that needs to be very, very clear. And unfortunately, it was not in the material that was mailed out.

"The second issue references special education and, unfortunately, it was silent on Act 173, which is an important piece of legislation that the State Board of Education is actively implementing now, that will ensure that independent schools are able to provide special education services to students," he said.

Teri Corsones, of Mendon, pointed to the irony of limiting choice to increase equity: "One of the many advantages to living in Mendon is that high school age residents have a choice as to where they can attend high school. High schools vary because students' interests and abilities also vary. It's only common sense that it's beneficial to offer students a wide variety of choices to best fit their unique interests and abilities.

"The clear trend nationwide is to expand school choice not to limit it. It's therefore astonishing to me, as well as a warning, that this school board is interested in limiting our high school students' choices, ironically in the name of equity... To claim that limiting your choice is somehow in the interest of equity begs the question: Who has equity? The high school students who benefit from the wide choices that they now enjoy? or the equity of someone who doesn't know a student or their circumstances who has decided it's best that students have limited choices?" she asked.

"The suggestion that only the wealthy can go to certain schools ignores the many, many scholarships that private schools offer. In fact, low-income and middle-income students stand to lose the most from this supposedly equitable proposal," she went on. "Without the town's tax contribution, what are the chances that low and low to middle income students would have the ability to attend schools not on this limited list?"

Cort Jones, a lifelong resident of Mendon and alum of both Barstow and Rutland High School, explained that funding independent schools had a minimal effect on tax dollars: “Twenty-one of our current 100 high school students are enrolled in private schools this fall...Private schools do not burn your budget planning process. The state of Vermont predetermines the tuition costs for private schools (this year that is \$16,840.42 per student) and this sits right in the middle range of your three proposed public schools. All in all, if our 21 private school students attended [public] high school the savings to our two towns combined to be \$2,980. Are we going to give up private choice for less than \$3,000 a year between our two communities?”

Emily Wiezalis, a Chittenden resident of 10 years, said “we only looked at properties in towns with full choice. And we moved to this district specifically for this purpose, I don’t think we otherwise would have looked to reside in Chittenden.”

She also expressed “concerns about the document that the board distributed, especially that bullet about that school choice impacts budget, stability and planning. If the per pupil rate is the same, then the expenditure is actually predictable and calculable,” she noted.

Chittenden resident Lisa Purcell, who was a school board member during the Act 46 merger process that created the BUUSD, was among the few who spoke in support of considering public options: “It is true, that school choice was very, very important to the community when we went through that process... My biggest concern about continuing to funnel our public tax dollars to private schools is that it is a drain on our public schools. When we send \$16,842 to a private school, then that amount [the state average tuition] does take money away from the public schools overhead and from the General Administration, it ends up costing taxpayers more. So ultimately this means that we are, for every \$100,000 in of home value, we’re spending each of us \$100. To have school choice for many people, you know that’s \$200-\$250 out per year in our district.”

Jane Munroe, from Chittenden, also spoke in support of narrower school choice options. “I do support school choice, I support large choice in regard to public schools — that would be my preference. I think it is important to have public dollars going to public schools and to do the best we can to support our public institutions. I don’t understand why the board, maybe I just need a little bit more education as to why the board would want to limit it. Our choice to only three public schools, I do find that problematic.”

Mindybeth Gutzwiller-Pike, a Mendon resident and school administrator, asked a question about a parallel program that offers public high school choice (Act 129 of 2012) allowing students with a public high school or designated high school(s) to apply to attend any other high school in the state. Schools are allowed to limit the number of students who may transfer from a school, with a cap of 10% of resident students or 40 students, whichever is smaller; schools may set higher limits, according to the Agency of Education. If more students want to transfer out of or enroll into a school than there are places available, nondiscriminatory lotteries are used.

“Right now the school choice rules say that 10% of the town residents or up to 40 students may petition to go to a different school,” Gutzwiller-Pike summarized. “So my question is, if this does pass, and we’re told that we have three public schools, is that lottery still in effect for the 10% of the population that still would like to send their child to a different school?”

School board members told Gutzwiller-Pike they would get back to her directly with an answer. Chris Bianchi, a Killington resident who attended Killington Elementary and MSJ, served on the Select Board for nine years and the School Board for four and now works for Killington Mountain School and as a real estate agent, reiterated the value of school choice.

“I want you all to realize that you have something that’s very valuable and that is school choice. I show property to so many people that are looking for towns that provide school choice, and so many families that move into your town with kids don’t just have high school kids looking to go to high school. They have younger kids that go to Barstow and coming from Killington and being in a town that does not have school choice. We were always looking for ways that we can increase our full time resident population,” he said. “So don’t give up your school choice, because it will hurt your Barstow school, it will hurt your property values. I’ve seen it. I know it. It’s part of my business. And I’m not speaking from KMS. I’m just speaking from someone who’s got a lot of experience in all these matters.”

Sara Tully, town administrator for Mendon, agreed, echoing similar points: “Having worked in the town office, I have heard time and time again of families and future families that may not have kids yet, move in based on that excellent reputation of Barstow elementary school, as well as having school choice at the high school level. Therefore, limiting school choice will directly impact the enrollment at Barstow as well as negatively impact the property values on both accounts.”

## Next steps

The next Barstow Unified Union School District Board meeting will be held Monday, Sept. 20. The board expects to vote then (or at the following meeting) on whether or not to drop the issue or put it on the ballot for the voters of both towns to decide.

The State Board of Education is also actively involved in a public comment period, according to Oliver Olsen. It is soliciting public input on “some extensive rulemaking governing independent schools in Vermont,” he said. There are several public hearings scheduled this fall and the state is currently accepting written comments for record.