



## **Testimony in Opposition to LD 2109:**

### **An Act to Define "Public Education" and Clarify That a Private School Receiving Approval for Public Tuition Must Be Located in the State**

Senator Rafferty, Representative Murphy and the distinguished members of the Committee On Education and Cultural Affairs, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify in opposition to LD 2109: An Act to Define "Public Education" and Clarify That a Private School Receiving Approval for Public Tuition Must Be Located in the State.

This legislation represents an unjustifiable restriction on parental and student choice and a deliberate narrowing of Maine's long-standing town tuitioning tradition, which has served students in rural communities for over a century. By mandating that only private schools located within the borders of Maine may be approved for public tuition payments, the bill arbitrarily limits the educational opportunities available to Maine families, particularly those living in towns that do not operate their own public schools.

## **Restricting Parental Choice**

LD 2109 would prohibit families from selecting high-quality, long-established schools just across state lines—many of which have deep-rooted ties with Maine communities—simply based on geography. This kind of restriction is not in the best interest of students or taxpayers. The educational needs of Maine children do not end at the state line, and public policy should reflect that reality.

Rather than expanding access to diverse educational opportunities, this bill aims to limit them. Such a move contradicts the fundamental principle that education dollars should follow the student to the school that best meets their needs—public or private, in-state or out-of-state.

## **A Politicized Definition of "Public Education"**

LD 2109 seeks to codify a narrow and ideologically driven definition of “public education” that ties the term to a system in which instruction is provided primarily at public expense, governed by uniform state and federal mandates, and delivered tuition-free across the kindergarten through grade 12 continuum. While the bill does not require every individual school to offer all grade levels, it nonetheless elevates a single, government-centric model of education as the exclusive benchmark for what qualifies as “public.”



By doing so, the bill marginalizes alternative and innovative education models that have long served Maine students—such as private schools participating in town tuitioning, virtual and hybrid programs, and other nontraditional learning environments that meet student needs but do not conform neatly to this centralized definition. Rather than focusing on educational outcomes or parental choice, the bill emphasizes bureaucratic structure and compliance.

Education that serves the public interest should not be confined to one uniform system or administrative model. This redefinition undermines Maine's tradition of educational pluralism and tilts the policy landscape decisively toward government-run institutions, reducing flexibility for families and limiting access to diverse educational options that have proven successful for generations of Maine students.

### **An Attempt to Undermine students' right to quality education and to travel**

LD 2109 appears designed to sidestep the U.S. Supreme Court's decision in *Carson v. Makin* (2022), which held that Maine could not exclude religious schools from its tuition assistance program simply because of their religious character. The Court made clear that when a state offers public benefits—such as tuition payments to private schools—it cannot withhold them based on arbitrary or discriminatory criteria that are unrelated to educational quality.

Rather than accept this directive and open access to all qualifying schools, this legislation instead erects a new barrier by excluding all schools located outside of Maine, regardless of their quality, history of serving Maine students, or alignment with local educational goals. This maneuver is not only constitutionally questionable—it is plainly inconsistent with the spirit of educational freedom affirmed in *Carson*.

The U.S. Supreme Court has consistently struck down such restrictions when they operate to deny individuals access to public benefits on the basis of irrelevant or prejudicial classifications. In *Shapiro v. Thompson* (1969), the Court held that a state could not deny welfare benefits to otherwise qualified individuals simply because they had not lived in the state for a full year. Doing so, the Court found, penalized the fundamental right to travel between states and violated equal protection guarantees.

Similarly, in *Vlandis v. Kline* (1973), the Court rejected a state policy that presumed students with out-of-state addresses were not bona fide residents and therefore ineligible for in-state tuition. The Court emphasized that states cannot make automatic or irrebuttable assumptions about individuals that deny them equal access to public benefits. Just as the state cannot assume that all out-of-state students are not genuine



residents, so too should it not assume that all out-of-state schools are inherently unfit to serve Maine students—especially when these schools have long-standing relationships with Maine communities.

These precedents echo the core holding in *Carson*: states may not impose arbitrary restrictions on school eligibility in programs designed to support student learning. Whether that restriction is based on religion, residence, or location, it is constitutionally suspect if it fails to relate to the state's interest in improving educational outcomes.

By excluding schools solely because they are located outside Maine—even if they are academically strong, historically connected to Maine's tuitioning tradition, and well-suited to serve certain students—LD 2109 mirrors the same exclusionary logic the Court rejected in *Carson*. This approach does not prioritize educational quality; it prioritizes political control.

Maine cannot presume that in-state schools are always the best choice for every child, any more than it could presume that out-of-state students are never true residents or that unmarried fathers are unfit parents—a presumption the Court has also invalidated in equal protection cases. Each student deserves a full range of options based on individual needs and local context—not based on a map.

In short, this bill trades meaningful educational opportunities for bureaucratic uniformity and, in doing so, violates both the principles of fairness and the constitutional protections that guard against arbitrary exclusion.

## **A Blow to Rural Education**

In many small towns, the town tuitioning system is a lifeline, allowing families to choose the best available school for their children in the absence of a local public option. For decades, out-of-state schools have partnered with these communities to deliver exceptional education. We've all seen the effect that the two Maines problem has had on rural students. This bill would disrupt those relationships and force rural families into fewer, and possibly inferior, options, further widening the divide between Maine's haves and have-nots.

## **Conclusion**

Maine Policy Institute urges the Committee to reject LD 2109. This bill does not serve students. It serves the institutional interests of the public education bureaucracy at the expense of family empowerment, educational innovation, and constitutional rights.



Maine should be moving toward more choice, more flexibility, and more accountability in education—not less. Thank you for your time and consideration.