

## TESTIMONY

**Testimony To:** Senate Education Committee

**Respectfully Submitted by:** Heather Bouchey, Interim Secretary  
Anne Bordonaro, Interim Deputy Secretary  
Cassandra Ryan, Director of Regulatory Compliance

**Subject:** **Agency of Education Feedback on H.630**

**Date:** April 12, 2024

---

Thank you for the opportunity to provide testimony on H.630, an act relating to boards of cooperative education services (BOCES).

The Agency agrees strongly that regionalization may be an excellent option for supervisory districts and supervisory unions to improve efficiency and lower costs, while at the same time expanding expertise and consistency in their programs and operations.

In the House, we proposed an amendment to section 604(d) of the bill to address our concern regarding potential authority of BOCES to operate as LEAs to distribute federal funds. The House approved this amendment. 16 V.S.A. Section 43 defines the LEA for purposes of distribution of federal funds and accountability for student performance as the supervisory union (or supervisory district). Some of reasons for this proposed amendment include:

- There cannot be different LEAs for different ESEA programs since program allocations and uses depend on one another. For example, Title IA allocations define IIA and IVA allocations, and in their annual applications, LEAs are expected to demonstrate how they will use their funds in coordinated, aligned ways (including with state, local, and other federal funds) to improve student achievement at the school-level.
- There must remain tight connections between receipt of funds and accountability for fund use in compliance with federal requirements. For example, during monitoring, if an LEA has been found to have used resources in an impermissible way, they must engage in corrective action which could include recouping of disallowed costs.
- For these reasons, very few states allow their BOCES-type regional organizations to be the LEA for ESEA programs.



- Additionally, there are significant concerns regarding how the rights of students with disabilities to access a free, public education in the least restrictive environment where parents are able to engage in their child's learning with their child's special educator(s) would be ensured if BOCES were permitted to distribute IDEA funds. There also are concerns regarding whether accountability for fulfillment of Individual Education Program (IEP) expectations would be negatively affected if a regional entity were to become the LEA for IDEA funds.

With the House's addition of this proposed amendment to address these concerns, these concerns have been resolved and we wish to reiterate our support for the bill at the *high-level concept* of both a BOCES or a Joint Agreement. We also wish to share several additional concerns that are more evident in the *details of implementation*. Such details are the linkage between the quality of the idea and the degree to which it will be taken up and used effectively. Such details that would benefit from additional exploration include:

1. How addition of such regional entities, if their member LEAs were to use federal funds from the LEAs for their services, might affect compliance with Federal fiscal tests that require transparent accounting of state/local dollars in relation to federal funds for purposes of equity (e.g., Maintenance of Equity, Supplement not Supplant, Comparability). These fiscal tests must occur at the LEA and school levels per federal law.
2. What the proper allocation methodologies would be to assign and track costs and maintain data integrity at the level of detail necessary to conduct such tests and meet other reporting and accountability requirements.
3. How to maintain the relationship between use of funds and accountability between separate entities – avoiding lack of clarity between authority, responsibility, and funding. It will be important to draw clear lines of responsibility and authority between the LEAs and the BOCES to avoid confusion about potential issues of non-compliance. For example, if one or more member LEAs are using federal funds to support BOCES activities, are those activities then subject to the programmatic (required set asides, parent & family engagement, allowable uses, etc.) and fiscal requirements of the federal funds from which they are being paid and who is responsible for ensuring that these requirements are being met?
4. Consequences for the indirect cost rates and the indirect dollars recovered by LEAs would need to be evaluated:
  - a. Financial data used to calculate the Indirect Cost Rate will be impacted by different spending patterns. The result of this is unknown as it will depend on the types of services provided by BOCES and the dollar values involved.
  - b. The amount of recovery of indirect cost dollars may be reduced as LEAs are only allowed to charge indirect cost rates to the first \$25K (soon to be \$50K) of a contract. This will be better understood when we know more about the agreement(s) between the LEA and the BOCES.
5. Potential impact of additional costs and increased burden on the limited statewide resources by increasing the number of entities responsible for accounting of Federal and state funds (e.g., BOCES increases need for up to seven (7) additional educational leaders and financial experts which already are in short supply).

6. Impact on the SEA of the required additional reviews, monitoring, and single audits for additional entities. While with our proposed amendment, a BOCES is not eligible for the Federal formula grants to LEAs, the BOCES may apply for and receive other Federal grant funds. If the BOCES as an entity expends more than \$1 million in such awards in a given fiscal year, it will need to have a federal single audit. It would also be subject to monitoring activities. If an expense is disallowed either in a monitoring or audit, it is unclear what source of non-Federal funds would be available to offset the disallowed cost.
7. Instability of memberships (either up or down) and the consequences to shared property, equipment, staff, allocations, contribution for services by all for services only needed for some. Distribution/disposition of property is a concern if one or more of the member LEAs uses federal grant funds for their contribution to the purchase.
8. The potential for one member LEA to use Federal funds and other members to use state/local creates a higher degree of complication for allocating the expense of Teacher's retirement to the Federal funds.
9. Changes will be required to the statewide Uniform Chart of Accounts (UCOA) coding that is used by VT SU/SDs to account and report financial data. Currently, the UCOA is not built to accommodate the additional layer of a BOCES.

The above are not intended to appear as negatives – they are simply areas of implementation concern for which we do not know the consequences and have not had an opportunity to research and develop solutions. In addition, there are likely many more implementation details/issues that will be uncovered with more time and conversation.

**Vermont statute currently offers two options that may well address the Legislature's goals of increased efficiencies, lower costs, and expansion of expertise and equity, without incurring some of the administrative and accountability challenges noted above.**

Currently, 16 V.S.A. § 559(e)(5) offers authority for SUs and SDs to enter into agreements with each other to conduct joint bidding procedures. This does not require AOE approval; therefore, the AOE does not have the data for how often this flexibility is used.

16 V.S.A. § 267 allows SUs and SDs to enter into "joint agreements" to cooperatively... provide joint programs, services, facilities, and professional and other staff that are necessary to carry out the desired programs and services..." Statute requires that the Secretary approve these agreements, and the AOE has only approved a handful over recent years. We wonder if there may be additional agreements between SU/SDs for shared services.

**We believe the following two steps are critical for us to gain some insight and understanding to ensure we move forward down the right path(s) to achieve our shared goals for Vermont SU/SDs.**

1. Survey VT SU/SDs to gather thoughts on opportunities current available in Title 16 such as:
  - a. SU/SD's understanding of this option
  - b. Current use including benefits and difficulties

- c. Ideas for potential use
- d. Suggestions for how the AOE could provide resources for assistance
- e. Obstacles that could be addressed to make this option more viable.

The information gathered would allow the Agency to be more immediately supportive of SU/SD's that wish to pursue this option. Supports could include trainings and guidance documents as determined appropriate.

2. Establish rules (requires rule-making authority) to build the necessary structure around existing statute for joint agreements to provide the details and timelines for successful use of the current flexibilities.
  - a. Request authority for the AOE to engage in the rule making process for rules to further clarify the joint agreement statute. Rules fill the gaps between statute and process that allow SU/SDs to confidently move forward. With strong rules addressing the agreement requirements, fiscal consequences, and allocation methods, we also may be able to suggest removing the need for Secretary approval of each joint agreement, which would remove some of the already identified hurdles of the joint agreement process: unknown requirements resulting in an iterative and unclear process.