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VIA EMAIL

March 11, 2014

Vermont Senate Education Committee
Senator Dick McCormack, Chair
115 State Street
Montpelier, VT 05633

RE: S. 175 - *An act relating to permitting a student to remain enrolled in a Vermont public school after moving to a new school district*

Dear Senator McCormack and Esteemed Members of the Vermont Legislature's Senate Education Committee:

My name is Jay Diaz and I am a staff attorney at Vermont Legal Aid. I represent Vermont families and students in a variety of education matters related to students' right to an equal educational opportunity. The majority of my clients are students who are homeless and students who require special education services. I am also Vermont Legal Aid's representative member of the Vermont Child Poverty Council with Senator McCormack and Senator Baruth.

My clients move more frequently than most, so I have some direct experience with the issues raised by S. 175. Thus, I am writing to voice a concern about the bill and propose a solution.

S. 175 May Offer More Choice to Vermont Families Moving During the School Year

Every year, many Vermont families move to a nearby town during the school year. Although it is not generally required by law, many Vermont schools use their discretion to allow students who have moved to a different district to remain in their school of origin for the remainder of the year. However, clients of mine have also been denied continuity at their school of origin when they have moved during the school year.

S. 175 may offer Vermont families additional freedom to move during the school year because they will have less fear that moving will be a detriment to their child's education. Studies

consistently show that when a child moves to a new school during the school year, the child loses 4-6 months of learning. These studies were the main justification for the McKinney-Vento Homeless Assistance Act which guarantees homeless students the opportunity to stay in their school of origin for the duration of their homelessness. S. 175 may offer all students this option to remain in the school of origin through the remainder of their school year, thus preventing the typical learning loss.

S. 175 Requires Further Explanation to Comply with Federal Law

However, S. 175 may also conflict with federal law. If not addressed, this conflict will hurt families who are unaware of their right to school transportation guaranteed in federal law. Specifically, the McKinney-Vento Homeless Assistance Act requires school districts to provide transportation to the original district when a student's family moves to a new district because of homelessness. Additionally, under federal special education law (IDEA and Section 504 of the Rehabilitation Act), transportation can be required for students with disabilities if it is necessary for them to access a Free Appropriate Public Education. Without further explanation, S. 175 could prevent homeless families and students with disabilities from receiving transportation that is required by federal law.

If school districts mistakenly believe they do not need to offer transportation to homeless students or students with disabilities because of S. 175, lawyers like me will be forced to argue about the supremacy of federal law over state law with school administrators. Such arguments will likely require districts to contact their attorneys, creating the risk for unnecessary litigation and legal costs for school districts. Therefore, S. 175's exception in part (k)(B)(2) which allows districts to deny transportation to students who have moved outside the district requires further explanation to comply with federal law.

Proposed Solution to Resolve the Conflict with Federal Law

To resolve the possible conflict with federal law, the Education Committee should consider placing an added sentence to the transportation clause in part (k)(B)(2) to state (see italicized section below):

“If a student retains legal residency in the original district pursuant to this subsection, then the original district and the second district each shall have exactly those rights and responsibilities in connection with the student that it would have if the student were physically domiciled in the original district; provided, however, that the original district is not required to provide transportation for the student even if it provides transportation for other students enrolled in the school it maintains. Nothing in this section shall be construed to eliminate state or federal requirements for districts to provide transportation to eligible students living outside the original

district under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, McKinney-Vento Homeless Assistance Act, or other law. Further, nothing in this section shall be construed to prevent a school district from providing transportation to a student living outside the original district at the school district's discretion.”

Please do not hesitate to contact me with any questions or thoughts at (802) 383-2207 or jdiaz@vtlegalaid.org.

Thank you.

Sincerely,



Jay Diaz
Staff Attorney
Vermont Legal Aid, Inc.