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Agency of Education

VIA EMAIL

March 7, 2014

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

RE: S. 175

Dear Senator McCormack:

The Agency of Education offers the following comments regarding S. 175:

1. Families in Transition Due to Economic Hardship

At the last committee hearing on S. 175, on February 26, 2014, Senator Collins described a situation that he would like to remedy, through this legislation. Specifically, Senator Collins expressed concern about a family that may be renting a residence in one community, then loses that rental for economic reasons, and ends up staying with relatives who reside in a different community.

I raised the possibility at the previous hearing on S. 175 that circumstances like this may already be addressed by federal law, and afford protection to families and students. After more careful research, I do believe that Senator Collins' concern, at least as the issue is framed above, is captured by the federal McKinney—Vento Act. The McKinney— Vento Act was enacted in 1987 "to provide urgently needed assistance to protect and improve the lives and safety of the homeless ...." Pub. L. No. 100-77, 101 Stat. 525 (codified at 42 U.S.C. § 11431 (1988)). The Act requires states to assure that each child of a homeless individual and each homeless youth have access to a free and appropriate public education. 42 U.S.C. § 11431.

The Act expansively defines homeless children and youths, in relevant part, as:

> (A) [I]ndividuals who lack a fixed, regular, and adequate nighttime residence ... and
> (B) includes—

> (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardships, or a similar reason.

This includes families that are living "doubled-up" because of the economic hardship. So, if one family cannot afford to live financially on their own, and they live with another family, that is what is considered as doubled-up.

The Act requires that each state prepare "a plan to provide for the education of homeless children and youths within the State." Id. § 11432(g)(1). Pursuant to this plan, if it is in the best interest of the child, the local educational agency ("LEA") is required to continue a child's education in his or her school of origin for the duration of homelessness. Id. § 11432(g)(3)(A)(i). In determining a child's or youth's best interest, an LEA must, to the extent feasible, keep a homeless child or youth in the "school of origin" unless doing so is contrary to the wishes of the child or youth's parent or guardian. See U.S. DOE McKinney Vento Guidance Memorandum, July 2004, retrieved from: http://www2.ed.gov/programs/homeless/guidance.pdf

In the event a dispute arises over school enrollment, the Act requires that the child "shall immediately be admitted to the school in which enrollment is sought, pending resolution of the dispute." Id. at § 11432(g)(3)(E)(i) (" Pendency Provision") (emphasis added).

The purpose of this analysis is informational. It is not an assessment of whether the McKinney—Vento Act might preempt S. 175, at least in the context of families in transition for economic or other reasons. Each case is fact sensitive so it would be difficult to definitively assess whether S. 175 implicates the possibility of federal preemption.[1]

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[1] The United States Constitution provides that "the Laws of the United States ... shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. This supremacy clause allows for the federal preemption of state and local laws. In re Commercial Airfield, 170 Vt. 595, 752 A.2d 13 (Vt. 2000), citing Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) (citations omitted). There are four ways in which federal law can preempt state law: explicit or implicit statutory language, actual conflict, or occupation of the field. See Id.

2. School Finance Implications of S. 175

If a regular or special education student moves after the 20 day census period (§ 4001(1)(A); 11th day of the school year through the 30th day), S. 175 should not have a significant financial impact on either the original district or the new district to which a family has moved.

Brad James, Education Finance Manager for the Agency of Education will be available to testify at the next hearing on S. 175 to more fully discuss the school finance issues surrounding the bill.

3. Other Observations

It might be advisable to consider to shift these proposed changes from 16 V.S.A. § 1075 to 16 V.S.A. § 1093 – "nonresident pupils." This would avoid any confusion around redefining student residency in the context of the federal McKinney Vento law and the existing processes related to it. In addition, school districts already have the ability to enroll non-resident pupils under § 1093 and the proposed changes in S. 175 may align with that process better than a redefinition of student residency to ensure continuity of instruction; this is particularly the case when a family moves during the course of the school year for reasons unrelated to a housing crisis and simply want to finish out the year at their original school. We hear about this on occasion at AOE from families around Vermont. Our anecdotal evidence suggests that some districts already provide for continuity, and allow students to remain enrolled after moving, once they have already been counted for ADM purposes, while others do not.

4. What Other States Are Doing

Senator Doyle requested that the AOE look into how other states deal with this issue. I reviewed the other New England states and New York, and some other states across the country. I did not find any state law similar to S. 175 which mandates continuity of instruction at an original school district after moving, with the exception of the processes in each state that are designed to comply with the requirements of the federal McKinney Vento Act. Generally, most states allow for interdistrict enrollment by agreement. See e.g. Louisiana Revised Statutes (LRS) 17:105 ("Local school boards

may, by mutual agreement, provide for the admission to any school of pupils residing in adjoining parishes and for transfer of school funds or other payments by one board to another for, or on account of, such attendance"). Illinois, on the other hand, requires mandatory intradistrict open enrollment policies, within the same school district. See 105 ILCS 5/10-21.3a. In Vermont, that would not achieve the goal of S. 175; a modified approach could be to ensure continuity of instruction for students who move during the school year at least within the same supervisory union (along the lines of the Illinois law). What I also found is that several states, such as Massachusetts, have voluntary policies around interdistrict enrollment to address racial imbalances in urban and suburban school districts. See e.g. MGL 76-12A.

In sum, I have not found any state law in another state that specifically addresses continuity of instruction for students who move during the school year as S. 175 seeks to do.

Please contact me with any questions or concerns.

Sincerely,

Gregory J. Glennon, Esq.
General Counsel

cc: Members of the Senate Education Committee
Donna Russo-Savage, Esq.
Kenneth Bruno