

March 2, 2016

Douglas Hoffer, State Auditor  
132 State Street  
Montpelier, VT 05633

Dear Mr. Hoffer:

I am writing in reply to the draft Equalized Pupils Audit you provided to me for review and comment by this Agency, before final publication by your office.

First of all, thank you for taking this task on. The equalized pupil count is an important component of how we determine the homestead education statewide property tax. As you note, this process stems (in part) from the decision of the Vermont Supreme Court in the case of Brigham v. State of Vermont, 692 A. 2d 384 (Vt. 1997). In the Brigham case, the Vermont Supreme Court held that the educational financing system existing (at the time) fell short of “providing every school-age child in Vermont an equal educational opportunity.” Brigham v. State, 692 A.2d 384, 386 (Vt. 1997). “ In Vermont, the right to education is so integral to our constitutional form of government, and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification.” We appreciate your attention to this important work, and will use your feedback to reflect on and improve our processes.

Act 60, which was signed into law in June 1997, served as the legislature’s interpretation of its obligation under the Vermont Constitution to make educational opportunity available on substantially equal terms to Vermont’s children. See 16 V.S.A. § 1 (“the right to public education is integral to Vermont’s constitutional form of government and its guarantees of political and civil rights...to keep Vermont’s democracy competitive and thriving, Vermont’s students must be afforded substantially equal access to a quality basic Education”).

The State’s method for calculating a tax rate to fund public education is the mechanism by which we strive to promote and achieve the standard enunciated in the Brigham decision, and the Vermont Constitution. Undoubtedly, the State carries a heavy burden to maintain and implement a school funding scheme that meets the core needs of all students.

Therefore, we are very appreciative for your effort in evaluating our work in this realm. The public needs to know how we do this, and much like your efforts with this audit, we strive to make sure that this process is transparent and maintains fidelity to the high ideals

embedded in the Vermont Constitution with respect to equity in learning opportunities, for all of our students.

We are very gratified that your office, after a painstaking review, has concluded that this Agency has “accurately computed the FY 2016 number of equalized pupils based on the data used in the calculation.” We also appreciated the complimentary feedback you and your staff provided at the recent audit “exit” interview about our process for executing this critical function for taxpayers and students. In addition, we have and will make a few adjustments to our processes in response to this audit.

I would like to offer the following specific comments about some of the data inputs we make at the state level, based on data submissions by local systems, in crafting the pupil count, for all districts.

#### English Language Learner (ELL) Student Count

We believe that you have mistakenly relied upon data from an inapposite state level report compiled for federal reporting purposes as the correct source for the number of ELL students (ELL’s). We agree that we should review and revisit our guidance to school districts on this data collection/submission to the State. We will do so. It cannot hurt as we seek to continuously improve process and systems.

Regarding ELL’s, your report uses data from two different data sources, collected at two different times and for two different purposes with different criteria to decide the accuracy of our ELL inputs. In addition, ELL’s represent a highly mobile population. Pursuant to federal regulations, the students take the test (to determine eligibility for services) in the spring and are not confirmed as ELL until after that. And, for the purposes of equalized pupils, state law requires the Agency to make these determinations by December 15<sup>th</sup> of each year. A fundamental issue is that the data are pulled at different times, and there is student mobility between the dates of the two data pulls. We would expect these two systems to yield different numbers. Simply put, we cannot use the ELL (federal) assessment data for the purpose of correctly counting ELL students for (state) funding purposes, and we cannot use a spring collection to verify how many ELL students were enrolled at the time of the fall census. This makes comparisons problematic. This is a weakness in the system, and we will continue to evaluate strategies to improve, and we welcome any other suggestions from your office.



### The Pre-K Count

Your draft report (at p. 9) states that the prekindergarten precount added 756.5 students. This figure is wrong for equalized pupil count purposes. The precount of prekindergarten students only added 267 equalized pupils. This had no material affect on the base statewide tax rate and the precount helped advance the successful implementation of the new universal prekindergarten law. We also dispute your conclusion that the precount itself was “erroneous” and not aligned with state law. To the contrary, we received direct feedback from the two (2) lead sponsors of the Universal Pre-K law. These legislators (both highly respected) stated that the intent of the Universal Pre-K law was not to harm districts that previously provided Pre-K in some form, under Act 62 of 2007. The statement of legislative intent (by Senator Mullin and Representative Buxton) is attached hereto and incorporated by reference into the Agency’s comments to the draft audit. Upon review of the whole law, we are required to “look at the whole statute, the subject matter, its effects and consequences, and reason and spirit of the law. Progressive Casualty Insurance Co. v MMG Ins. Co., 2014 VT 70, ¶ 10.

Here, the key legislators who wrote this law advised the Agency that it would be contrary to the intent of the legislature to implement this law in such a way that would be harmful and injurious to school districts and taxpayers. If the Agency had not allowed a precount estimate for FY 2016, it would have resulted in school districts all across the State being unable to count students that a district knew would (likely) be coming into a local system for prekindergarten. The written statement of the two key legislators confirmed our understanding of a similar discussion in the legislature at the time of the passage of the bill that became Act 166. All of these facts led us to make our decision to not injure districts through an extremely restrictive reading of the law.

Your chart at p. 10 illustrates this point well. For example, Dover, VT would have seen its homestead property tax rate increase by \$76.15 (for every \$100,000 of property value). Chelsea would have suffered a \$56.00 tax increase, Hartford’s increase would have been \$30.50. We stand by our decision to implement Act 166 in a way that was not harmful to school districts and taxpayers and which was also consistent with the legislature’s intent, and the whole statute.

### Legal Residency of Students

Your audit examined the practices of one supervisory union (Windsor SE SU), and its member districts, in regard to compliance with 16 V.S.A. § 1075. The enforcement of this law is a local requirement. We have a role to play at the state level for sure. Mainly, it is to



act as an appellate review body for any person aggrieved by a residency decision made by a local school board. Therefore, we try to avoid getting too closely involved in the details of individual cases, so as not to compromise our statutory role (at the state level) as an impartial adjudicator of residency appeals. We do however provide technical assistance on a regular basis to school administrators on this topic. We also maintain a body of administrative case law going back decades that we rely upon to inform that guidance along with its precedential value in deciding state level residency appeals.

We have a legal division comprised of two (2) attorneys. Our staff attorneys do not serve as legal counsel for school districts. It is both impracticable and not appropriate for our Agency to engage local policy monitoring and enforcement where the legislature has not tasked the Agency with this duty, and where the duty with which we have been tasked (adjudicating appeals) requires us to remain impartial, and at a distance, from this explicit area of local control. With that said, if there is a way for the AOE to improve its practice to assist local systems with compliance in the area of assuring the legal residence of students, we are open to it and welcome your suggestions.

Our bigger picture view on this issue is that legal residency monitoring (at the local level) is a high functioning area of statutory compliance because local boards are very mindful of the cost associated with educating non-resident pupils, at no charge. The idea of admitting a non-resident pupil, free of charge, is anathema to the mindset of every single board and district administration we interface with on this issue, whether it relates to technical support with a legal question, or docketing and hearing a state level residency appeal.

We offer no comment about WSESU specifically, except to say that our anecdotal evidence suggests that the Superintendent of Schools and his staff, and the district boards within the SU, are very aware and responsive to legal residency issues. In WSESU, there are tuition towns. Tuition towns can be more vulnerable, in our experience, to suspect claims of legal residency. The Superintendent of Schools has been in contact with our legal office on many occasions about residency issues along these lines and we believe he is acting responsibly and competently to ensure compliance with the residency law, among the member districts of the WSESU.

### Home Schooled Students

We are working to improve our data analysis in this area. We acknowledge that the state level scrutiny of the data submitted to the Agency by local systems can be improved. We are working to develop additional checks and balances at the state level. We appreciate your calling our attention to this, and expect to have improved processes in place in the



near future.

### State-Placed Students

We agree that the Agency can seek to improve practice in evaluating local data submissions relative to the state-placed student population, including improvement in the area of cross-checking all data sources maintained internally. We restate though that our process for determining this portion of the student count is based on a statutory methodology which reflects the difficulty in exactly capturing an indisputable number for this student population. State-placed students often move among multiple districts and schools, in a single school year.

In some cases, AOE is called upon, through its MOU with DCF, to approve continuity placement for students still classified by DCF as state-placed, even though there has been a reunification and/or return to district of residence. It can, and does happen, that the district of placement during the state-placed phase is not notified by DCF of a placement change, which can occur for any number of reasons, and the student remains in a dated placement, due to a lack of system coordination. For these reasons, the legislature instituted a one year “look back” for the state-placed student count in 2007.

Again, this student population tends to be far from constant and the statute change (as codified at 16 V.S.A. § 4001(1)(B)) was conceived as a way to more accurately capture this piece of the student census count. Based on our understanding that Act 66 of 2007 was intended to remedy inaccuracies in this count, we are content with our present interpretation and practice. However, we appreciate your advice to improve system coordination between DCF and school districts and our state level data matching processes, from all relevant sources. We will work on this.

### Local Systems’ Data Collection, Data Reporting, and Best Practice

The “takeaway” of your draft findings from my perspective is that local systems, arguably, are experiencing some difficulty with local data collection and submissions to the State. Once we receive the data, we are making correct calculations. That is an important validation for our Agency, but perhaps leaves more questions than answers about what all of us can do in the relevant State agencies and offices to support local systems, that, frankly, are overwhelmed on many levels. An aggravating factor at the Agency is that we have seen a dramatic and unprecedented decline in staffing since 2008, when we had 211 FTE’s (83.2 paid by the state’s General fund). Today, that number is 170 FTE’s (53.18 paid by the state’s General Fund). This somewhat limits our capacity to extend



technical assistance to school districts on issues related to state funding, especially given other statutory claims on those scarce general fund dollars.

With this in mind, we hope you may see this Equalized Pupil audit as an opportunity for your office to make available to school district officials an education program consistent with the statutory duties of the Auditor's Office at 32 V.S.A. § 163(12), which calls for the Auditor to make available (to school districts) an "education program to provide instruction in fiduciary responsibility, faithful performance of duties, the importance and components of a sound system of internal financial controls, and other topics designed to assist the officials in performing the statutory and fiduciary duties of their offices." I know our local school systems would be very grateful for any assistance you can offer, as we would be as well. After reading your draft findings, we feel such an education program would be a valuable resource for school district offices that may be encountering some difficulty in executing a basic duty (the Equalized Pupil Count) which can have a direct impact on the development of homestead tax rates.

We value any support you can offer in this arena. We would be happy to work with your office to make suggestions on such an education program offering by your office, to Vermont's school districts.

In the interim, we will take note of your report, we appreciate your recommendations, and we will continue to strive to improve our systems and practices.

Sincerely,



Rebecca Holcombe  
Secretary of Education

cc: Justin Johnson, Secretary of Administration

