

MEMORANDUM

TO: Senate Government Operations Committee

FROM: Joel D. Cook, Executive Director, Vermont-NEA

DATE: February 17, 2016

SUBJECT: S.217, Secs. 3-9

Background

- In its advocacy for an "autonomous" teacher licensing board, Vermont-NEA used OPR statutes as the guide. The Vermont Standards Board for Professional Educators was "advisory" from its 1989 inception until becoming autonomous in 2006.
- The educator licensing processes currently in place are generally complex and often appear to blend and, in the view of some, confuse licensing qualifications with actual job performance, but changing that is, properly, another, larger discussion I believe in part underlies the information gathering provisions in Sections 1 and 2 of the bill.
- Speech-language pathologists (SLP) are now licensed by OPR. A SLP, like all other professionals wanting to work in a professional school position, must have a proper endorsement, obtainable via an affidavit detailing sufficient education.
- Since early this month, stemming we believe from a notice sent its members by the Vermont Speech-Language Hearing Association about this and related bills, we have had a steady stream of inquiries and expressions of concern from SLPs around the state whose positions are in our bargaining units. Their overwhelming concerns have been about their employment and retirement security. Many also express interest in retaining actual teacher licenses.
- To be a professional employee in a public school, a SLP must be certified by the American Speech-Language Hearing Association (ASHA), hold a Vermont (OPR) license as a SLP, requiring ASHA certification, and hold a teaching SLP endorsement. There are separate fees for each.
- **In short, Vermont-NEA does not support eliminating a role for the Standards Board for Professional Educators in the licensing of any category of professional interested in being an employee of a school district engaged in providing professional education services to our children. We believe there are ways to amend the bill to meet this interest.**

Our position

There may very well be good ways to simplify the teacher licensing process, including for individuals holding an OPR license.

Presuming the holder of an OPR license is, by that fact, qualified to hold a professional educator license is not at all logical. If that were so, the reverse would likely be true as well: the holder of a professional educator license could be considered qualified to hold any of a number of OPR licenses.

As Introduced, S.217 does not adequately address retirement implications. It ignores the distinction between employees and contractors and permits individual employees and their school employers to change the mandatory nature of retirement participation.

As Introduced, S.217 does not adequately address labor implications. It confuses the meaning of teacher and administrator for labor purposes, it inserts an employer role in deciding whether individual employees should be represented, and it does not provide any protection during the transition between current and proposed law.

Our suggestions

Secs. 3-5: Teacher licensing

Sec. 3. The bill would define "teacher" as not including OPR licensees. That feels backwards: the entire point is to include some OPR licensees within the meaning of "teacher." Doing that would mitigate - perhaps eliminate - other (retirement and labor) drafting problems.

Secs. 4 and 5 would leave the Standards Board the capacity just to request OPR consider rulemaking to create licensing "subcategories" for school-based practice to "protect the interests of students and schools." This all ignores the basic provision of the teacher licensing law. 16 V.S.A. § 1692 reads: "...a person shall not be employed as a teacher or administrator in a public school without a license (under that law) then in force." The purpose of that provision is to protect our children.

Our suggestion is to **amend Secs. 3-5:**

- to include OPR licensees working in schools within the meaning of "teacher" by amending Sec. 3 to delete subdivision headings and the substance of "(B)," and to insert at the end of current (10):

An individual licensed pursuant to Title 26 who holds an endorsement under this chapter shall be considered a teacher licensed under this chapter.

- to retain within the Standards Board the authority to determine what endorsement(s) to provide Title 26 licensees by deleting Secs. 4 and 5 and, perhaps, by providing for joint rulemaking by the Standards Board and OPR.

Sec. 6: Teacher retirement

Subdivision (iv) of Sec. 6 would make teacher retirement participation for OPR licensees working in professional school employment voluntary, dependent on agreement between the school and the employee. This directly violates 16 V.S.A. § 1933(a), which reads, for good policy reasons: "Membership in the (retirement) system shall be a condition of employment for all teachers." Membership in the Teachers' Retirement System is a matter between teachers and the State, not teachers and their employer. Leaving this provision as is would:

- Set up obvious dissonance in the Teachers' Retirement System, including greater funding uncertainty;
- Result in licensees in the same employment situation in and out of the system and in possible changes in individual membership status from year to year;
- Create a new bargaining issue in which local school unions might have to negotiate over retirement system membership for their OPR licensees; and
- Ignore current participation by some OPR licensees in the Municipal Employees', rather than the Teachers', Retirement System.

Each of those anomalies, and the need for any provision about retirement, would disappear if Sec. 3 were amended as suggested above.

Our suggestion is to **amend Sec. 6:**

- If Sec. 3 is amended as suggested above, by deleting it; or
- If Sec. 3 is not amended as suggested above, by removing from subdivision (iv) the entire dependent clause following "this subdivision (20)."

Sec. 7: Teacher labor relations

Sec. 7 would attach to the meaning of "teacher" for collective bargaining purposes its new proposed meaning for retirement purposes. It is circular: it just won't work.

- Current law, in 16 V.S.A. § 1981, clearly distinguishes "teacher" from "administrator."
- The proposed language modifying "teacher" would add to its meaning any OPR licensee "recognized as a teacher" in the retirement law.
- The meaning of "teacher" in the retirement law includes, among other things, any school employee licensed as a "teacher, principal, supervisor, superintendent, or any professional" licensed by the Standards Board.

In short, Sec. 7 would, therefore, seriously confuse the distinction in the labor relations law between "teacher" and "administrator."

In addition, establishing a distinction between teachers and OPR licensees would introduce the need for a transition provision to address the bargaining unit fate of those who would no longer be considered "teachers." Collective bargaining agreements have "recognition clauses" that define employer positions covered by them. Many (not all) clauses in our agreements under the teacher labor relations law piggyback the meaning of teacher for licensing purposes. If that meaning (in § 1691) were changed, the "bargaining unit status" of many OPR licensees in school employment would be jeopardized.

All this proposed confusion would disappear if Sec. 3 is amended as suggested above.

Our suggestion is to **amend Sec. 7:**

- If Sec. 3 is amended as suggested above, by deleting it; or
- If Sec. 3 is not amended as suggested above, by:
 - Changing it so that the cross-reference is to the definition of "teacher" in the licensing statute (§ 1691), not the retirement statute (§ 1931), something like:

(9) "Teacher" means any person licensed employable as a teacher by the Vermont Standards Board from Professional Educators **or any professional licensed under Title 26, in accordance with section 1691(10) of this title, and** who is not an administrator as herein defined.

- Adding a transition provision to read something like:

Professionals licensed under Title 26 pursuant to the provisions of this act, whose employment position in a school immediately prior to its effective date falls within the recognition clause of a then effective collective bargaining agreement between the school district and its employees under either chapter 57 of this title or chapter 22 of Title 21, shall be considered to be in a bargaining unit position covered by that agreement unless and until the position is removed from the bargaining unit by agreement of the parties.

Secs. 8 and 9: Teacher endorsements

For reasons discussed above, our suggestion is to **delete Secs. 8 and 9.**