

Implementation Guidance on Act 166 of 2014

An act relating to providing access to publicly funded prekindergarten education

Part 1



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Act 166 Initial Guidance Packet

Thank you for your help and for working with us to provide universal access to high-quality prekindergarten education for Vermont children.

Act 166, passed by the Vermont Legislature in 2014, provides for publicly funded prekindergarten education for a minimum of ten hours per week for 35 weeks annually for all 3, 4 and 5 year-old children not enrolled in kindergarten. The Act has an implementation date of July 1, 2015.

On November 25th, we issued a Transition Relief Bulletin that delays the full implementation of Act 166 until July 1, 2016. Our decision to issue this policy was prompted by two major considerations:

- (1) the need to allow sufficient time for the adoption of administrative rules; and
- (2) the need to allow school districts, school board members, and voters adequate time to adopt school budgets to support universal prekindergarten education.

This action means that school districts now have the option to move forward and implement Act 166 starting July 1, 2015, or they may opt to wait until July 1, 2016. This is draft guidance, based on draft rules. Any final guidance is dependent on final approval of the rules.

In order for school districts and prequalified private and public prekindergarten education programs to be prepared to meet the requirements of Act 166, this guidance is being issued by the Agencies of Education and Human Services to provide information about the processes and procedures to be followed prior to finalization of the State Board Rules.

This document provides preliminary guidance in the following areas:

- Budget Guidance
- Frequently Asked Questions
- Interim Policy: Prequalification of Prekindergarten Education Programs
- Interim Policy: Establishment and Expansion of Public School Operated Prekindergarten Programs

We understand that implementing this law may be challenging, whether school districts decide to start full implementation on July 1, 2015 or July 1, 2016. There are many moving pieces to manage, including finances and partnerships.

We pledge to work through issues with you as they arise during the implementation process. We plan to host technical assistance opportunities, including a statewide finance meeting and regional sessions to answer additional questions.

Thank you again for your commitment to providing this crucial opportunity to Vermont children and families.

Sincerely,



Dr. Harry Chen
Interim Secretary, Agency of Human Services



Rebecca Holcombe
Secretary, Agency of Education

Interim Guidance Regarding Publicly Funded Prekindergarten Education Under Act 166 of 2014

Overview

During the 2014 Legislative Session, [Act 166](#) was passed and signed into law by Governor Peter Shumlin. Act 166 provides universal publicly funded prekindergarten education for a minimum of ten hours per week for 35 weeks annually for all 3, 4 and 5 year old children who are not enrolled in kindergarten.

On November 25, 2014, Secretary Holcombe of the Agency of Education and Interim Secretary Chen of the Agency of Human Services issued a Transition Relief Bulletin which delays the implementation of universal prekindergarten education until July 1, 2016. The purpose of this policy is twofold: to allow sufficient time for the adoption of administrative rules to guide implementation, and to provide school districts, school board members, and Town Meeting Day voters adequate time to adapt their budgets to support universal prekindergarten education. This action means that school districts now have the option of moving forward with implementing universal prekindergarten education on July 1, 2015 as stated in Act 166, or they may choose to delay implementation of universal prekindergarten education until July 1, 2016.

As required by the Act, [State Board of Education Rules](#) are being promulgated by the Agency of Education, in conjunction with the Agency of Human Services, regarding the requirements for and provision of publicly funded prekindergarten education. Due to the length of the Rules process, these Rules will not become effective until sometime in June of 2015. Meanwhile, in order to allow districts and private prekindergarten education programs to be prepared to implement universal prekindergarten education this coming year or in 2016-2017, this guidance is being issued by the Agencies of Education and Human Services to provide information about the processes and procedures to be followed prior to finalization of the State Board Rules.

This guidance shall become inoperative upon final adoption of the revised State Board Prekindergarten Education Rules, at which time the processes and procedures set forth in the Rules shall govern.

Prequalification as a Prekindergarten Education Program

All public and private prekindergarten education programs, including Head Start and public school operated programs, must apply for prequalification status, whether an existing program or a new program. This new requirement applies to all programs seeking to provide prekindergarten education regardless of whether the school district has elected to offer universal prekindergarten education starting in 2015 or 2016. Prior qualification does not apply.

Applications for prequalification will be available on the Agency of Education Website by January 7, 2015. A link to the application will also be available on the Agency of Human Services Website.

Responses to completed applications will be provided within thirty (30) business days from completion of the application.

The minimum standards for prequalification as set forth in Act 166 are that the public or private program receives and maintains at least one of the following quality program recognition standards:

- National accreditation through the National Association for the Education of Young Children (NAEYC);
- A minimum of four stars in Vermont's Step Ahead Recognition System (STARS), with at least two points in each of the five arenas; or
- Three stars in Vermont STARS if the program has a plan approved by the Secretary of Education and the Commissioner of the Department for Children and Families to achieve four or more stars within two years, including at least two points in each of the five arenas, and if the program has met intermediate steps.

In addition, the program's curriculum must be aligned with the Vermont Early Learning Standards and must be secular. Program staff must meet the standards listed in the section below.

To receive approval as a prequalified prekindergarten education program

Teachers in each district-operated prekindergarten education program classroom shall hold a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education.

Private prekindergarten education programs operated in a licensed center-based program shall employ, or contract for the services of, at least one teacher who holds a

valid Vermont educator license with an endorsement in either early childhood education or early childhood special education.

The operator of a registered or licensed family child care home prekindergarten education program shall ensure that one of the following requirements is met:

- The operator holds a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education; or
- The operator employs or contracts for the services of a teacher who holds a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education for at least ten hours per week for 35 weeks annually; or
- The program receives regular onsite active training and supervision from a teacher who holds a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education at least three hours per week, during each of the 35 weeks per year in which prekindergarten education is paid for by tuition from districts.

Programs that are not approved as prequalified may request reconsideration within ten (10) business days from notice of non-approval and upon submission of additional information relevant to approval for prequalification.

Establishment or Expansion of a Public School Operated Prekindergarten Education Program

Prior approval from the Agencies of Education and Human Services must be received before a school district may establish or expand a school operated prekindergarten education program. "Expansion" is when a district seeks to increase the number of children served in a district-operated program, and such increase will require additional teachers and/or classrooms. This new requirement applies to all school districts whether they choose to offer universal prekindergarten education in 2015 or 2016; it replaces the community needs assessment districts were required to complete under Act 62.

Applications for expansion/establishment will be available by January 5, 2015 on the Agency of Education Website. A link to the application will also be available on the Agency of Human Services Website.

Responses to completed applications will be provided within thirty (30) business days from completion of the application.

As part of the application, a public school district seeking approval for establishment or expansion shall submit information regarding:

- The estimated number of 3, 4 and 5 year old children not yet enrolled in kindergarten in the region which includes the requesting school district and bordering districts; and
- The types, locations and available enrollment opportunities of potentially prequalified public and private prekindergarten education programs in the school district and bordering districts that currently serve these children.

If data are not clear or there are other complex issues, the Secretaries of Education and Human Services may choose to conduct a community-needs assessment prior to approval of establishment or expansion of a public-school-operated prequalified prekindergarten education program.

Districts that are not approved for establishment or expansion of a prekindergarten program approved may request reconsideration within ten (10) business days from notice of non-approval and upon submission of additional information relevant to approval.

National School Lunch & Breakfast Programs

Local Education Agencies (LEAs) who participate in the national school lunch and breakfast programs may, and are encouraged to, include these pre-kindergarten children in the programs and provide access to healthy and nutritious school breakfasts and/or school lunches. This provides the school with an opportunity to increase meal participation, generate revenue for the program (portion sizes are smaller for pre-kindergarten students so there is a cost savings per meal), and often realize an increase in the enrollment of free and reduced price students in the school meals programs.

To incorporate these students in the school meals program, schools may follow these steps:

- **Free & Reduced Meal Applications:** Distribute meal applications to all households of pre-kindergarten students. The Agency of Education may be contacted to determine if students are on the Direct Certification List. The eligibility of siblings attending the school may be extended to the pre-kindergarten students.
- **Food Service Manager/Director:** Work with the food service manager or director to set up a system to serve the students in the cafeteria or to provide family-style meals to the students in the classroom. The food service manager will also work with the teacher(s) to set up a meal counting and payment system for the school meals.
- **School Site Application:** Modify the online school application to indicate that pre-kindergarten children will be served meals.

Pre-kindergarten students attending private preschools may access meals through the Child & Adult Care Food Program at day care homes and child care centers.

If you have any questions about providing meals to these new students, please contact Laurie Colgan at 802-479-1187.

Fiscal Guidance on Implementation of Act 166 of 2014

Overview

Act 166 of 2014 provides universal access to high-quality prekindergarten education for Vermont children. This access is an entitlement for any 3, 4, or 5 year old children not enrolled in kindergarten. Parents may choose to enroll their child at public expense in:

- a prequalified prekindergarten program in a public school or
- a prequalified private provider or Head Start program either within the school district of residence or outside the district, depending on the prekindergarten region established by the district.

In the Transition Relief Bulletin dated November 25, 2014, Secretary Holcombe of AOE and Secretary Chen of AHS pushed the date of mandatory participation of Act 166 to July 1, 2016 rather than July 1, 2015. While the requirement to offer universal prekindergarten is delayed a year, the Act repealed some existing statutory language regarding prekindergarten and replaced those with new sections of law. These new sections are not delayed and must be followed. The Secretaries allowed districts the option to move ahead with full implementation of Act 166. If districts so choose to move forward, they must follow the new provisions of the law and the interim guidance.

The law allows for school boards to propose a prekindergarten region with boundaries no smaller than the school district boundaries. These prekindergarten regions must take into account existing agreements with qualified private providers of prekindergarten education.

The following guidance applies to school districts starting in the year they fully implement Act 166 (i.e., either July 1, 2015 or July 1, 2016).

A statewide rate of \$3,000 has been proposed to provide 10 hours per week of high-quality prekindergarten education for 35 weeks. This is proposed to be the rate a school district will pay for prekindergarten students who are either in a program with a prequalified private provider or a prequalified public program in another school district that meets these hourly and weekly criteria. No additional fees or charges are allowed for the publicly funded 10 hours of prekindergarten education. Parental costs at prequalified private providers that provide a minimum of 10 hours of prekindergarten education for 35 weeks should be reduced by \$3,000 per child. (Note: for readability, the tuition rate will be referred to as \$3,000, with the understanding that the rate may have changed at the end of the rules promulgation.)

Providing universal access at public expense will have an impact on the budgets of school districts. The size of that impact will depend on how the school district provides access to new prekindergarten students. There are three scenarios:

- a school district provides prekindergarten education in-house and has capacity for any new students;
- a school district provides prekindergarten education through prequalified private providers or Head Start programs; and
- a combination of in-house and private provider or Head Start programs.

Eligibility, Access, and Prekindergarten Regions

Any child who is 3 or 4 years old as of the date established by the district for kindergarten eligibility is eligible for 10 hours of high quality prekindergarten education for 35 weeks if their parents choose to place their children in prekindergarten. Additionally, a five-year-old who is not enrolled in kindergarten is eligible for publicly funded prekindergarten education.

High-quality prekindergarten education is defined as developmentally appropriate early learning and developmental experiences based on Vermont's early learning standards. To be eligible to receive publicly funded students, prekindergarten education programs must seek prequalification and be recognized as prequalified.

Parents may choose to enroll their child in a public prekindergarten program in the school district of residence, in a public prekindergarten program in another school district, or in any pre-qualified provider within Vermont. This parental portability may be limited if a school board proposes and is approved to form a prekindergarten region. The process of determining the borders of a prekindergarten region is a collaborative process, but the decision to request a prekindergarten region rests with the school board. Approval of proposed prekindergarten regions rests with the Secretaries of the Agency of Education and the Agency of Human Services.

Budgetary Impacts

It is quite likely that the parents of a number of newly eligible prekindergarten students will take advantage of the public funding provided by Act 166. This will almost certainly be the case if a district currently provides a prekindergarten program for 4 year olds but not 3 year olds.

The impact on a district budget for new prekindergarten students will vary from district to district, depending on how much a district currently pays its private providers (i.e., the difference between the state rate of \$3,000 and current rate agreements, multiplied

by the number of children), whether a district is currently providing prekindergarten, how that prekindergarten education is currently provided (i.e., private providers or public programs on-site or out-of-district), and whether and how the district has previously used federal monies such as Title I to support prekindergarten education.

1. Districts that do not currently provide prekindergarten education

If a district is not currently operating or offering prekindergarten education, this will entail a new cost of \$3,000 for each prekindergarten student.

- a. Parents will have the option of choosing a prequalified private provider or a prequalified public program in another district.
- b. If the district receives prior approval from the Secretaries of AOE and AHS to begin an in-house program, the costs will not be based on \$3,000 per child, but rather on the cost of a qualified instructor, equipment, and supplies.

2. Districts that currently operate a prekindergarten program

If a district currently operates a prekindergarten program in-house and has the capacity to serve any new prekindergarten students, the cost to the district will be marginal. This presumes that parents choose the existing in-house program rather than a private provider or an out-of-district program.

If the district does not have the capacity to absorb new prekindergarten students, or if parents elect to place their children at a prequalified private provider costs will be dependent:

- a. on the number of students going out-of-district or to private providers at \$3,000 per child, and
- b. the extent to which the district expands or reduces its in-house capacity.

3. Districts that currently provide prekindergarten through private providers

If a district currently offers prekindergarten education solely through private providers, each new child will add \$3,000 to the district budget.

- a. If the current rate is lower than \$3,000 per child, there will be an additional cost for each child currently served and expected to be in a prekindergarten program the next year.
- b. Similarly, there will be a savings if the current rate is greater than \$3,000 per currently served child.

4. Districts with hybrid strategies for providing prekindergarten education

If a district provides prekindergarten through both an in-house program and private providers, the impact on the budget will be dependent on the number of new prekindergarten students, the capacity of the in-house program, the current rates paid to private providers, and parental decisions about where to place their children.

Essential Early Education Services

Access to 10 hours of publicly funded prekindergarten education applies to all age-eligible children, regardless of whether they have a developmental disability or not. Parents of some children receiving Essential Early Education services may choose to place their children in a prequalified public out-of-district program or a prequalified private provider program inside or outside the district. These placement choices will impact both the district budget and service delivery model. **Act 166 does not require school districts to provide Essential Early Education services outside of the district, and does not supersede state and federal special education rules.**

Many of the costs associated with Essential Early Education services are covered by federal IDEA-B monies and the state Essential Early Education grant. The remaining costs are the local share portion, which add to the district budget. While the federal and state monies will still be available to fund these services at other public or private programs at the district's discretion, the local share portion of the overall cost will be an additional cost to the resident district for any newly eligible student not in an in-house program or a student moving from an in-house program to a private program.

Additionally, the \$3,000 prekindergarten tuition rate for regular education will be paid for each child receiving Essential Early Education services whose parents choose to place their child in another public program or a prequalified private provider. **Parents choosing out-of-district or out-of-region placements should be aware that neither the district of residence nor the district where the program is located is obligated to provide services or monies for a free and appropriate public education, nor for a least restrictive environment.**

Department for Children and Families (DCF) Child Care Subsidy

Some parents are eligible for full child care subsidies from the Department for Children and Families (DCF). These subsidies are meant to pay for child care, not prequalified prekindergarten education. School districts will pay \$3,000 per child to a prequalified private provider for 10 hours of prekindergarten education, even if the parents are already receiving a full-time child care subsidy from DCF which is being used to pay

for full-time child care. The \$3,000 from the district covers ten hours of high-quality prekindergarten while the child is onsite but does not cover child care.

Other parents are eligible for partial child care subsidies to assist in paying for child care. These subsidies do not cover the full cost of child care and parents pay an additional amount to the child care provider. In situations such as these, where the provider is prequalified, the \$3,000 prekindergarten tuition for 10 hours would be used to offset the co-pay parents are charged. Stated differently, the prequalified provider would not be allowed to bill the parent for the 10 hours per week of prekindergarten education.

Some public schools may have an arrangement with private providers to provide both prekindergarten education and child care as privately run programs on the public school site. The state rate of \$3,000 will pay for 10 hours of prekindergarten education per week if the private program is a stand-alone program, and the private provider may not charge for those hours. The remaining time would be child care and the child care subsidy can be used by parents to pay for those costs.

Other arrangements may have the district providing a licensed teacher to a private provider or allowing the use of school space. In such cases, the \$3,000 rate per student may be reduced by the value of the in-kind services. As before, the remaining time would be child care and the child care subsidy can be used by parents to pay for those costs.

Districts must be mindful of any bonding restrictions that might govern the use of their facilities for purposes other than public education. The IRS has various criteria to determine the amount of space used for purposes other than public education, with the critical percentage exceeding 10% of space covered by the bond. If criteria show space used for non-public education exceeds the percentage, the district may lose the tax exempt status for any bond.

Tax Rate Impacts

While overall budgets will likely increase due to Act 166, the equalized pupil counts will also increase due to prekindergarten students new to the education system.

Generally, in any given district, the overall education spending per equalized pupil will decrease slightly with the inclusion of the prekindergarten counts and costs. This will have the result of lowering the homestead tax rate, which will mean fewer homestead taxes collected, all else being equal. However, this means there will be a net loss of

revenue to the Education Fund in terms of lower homestead taxes and the same scenario will likely occur in many other towns during the two years of implementation.

In order to account for this loss of homestead tax revenue to the Education Fund, the base homestead tax rate will need to be increased at the state level to ensure that the Education Fund has sufficient revenues to support all locally approved budgets. Thus, the net effect of universal prekindergarten implementation will likely be a homestead tax rate increase for all districts, although the magnitude of that rate increase will vary from town to town, depending on the above factors, as well as which year full implementation occurs.

1. It is likely that the base homestead tax rate and all town tax rates will increase due to the implementation of universal access to prekindergarten, all else being equal.
 - a. Education spending per equalized pupil will likely decrease for all districts with new prekindergarten students.
 - b. The homestead tax rate would decrease accordingly, reducing the amount of tax revenue coming into the Education Fund.
 - c. The base homestead tax rate will need to be raised to offset the loss of homestead tax revenue.

Average Daily Membership (ADM) Counts and Reconciliations

Prekindergarten students are counted toward a district's average daily membership count (ADM). The current and prior year ADM counts are used to calculate equalized pupils for the following year. Equalized pupil counts and education spending that includes any increased costs due to universal prekindergarten access are used to determine the district's homestead tax rate. This means that the equalized pupil count lags behind the actual ADM and associated expenditures.

Act 166 recognizes the lag between incurring new prekindergarten costs and counting new prekindergarten students, a lag that has an adverse effect on the homestead tax rate. The law allows districts to estimate and count additional prekindergarten students new to publicly funded prekindergarten education programs during the first year of full implementation if the district so chooses. If a district chooses to move forward with Act 166 in FY2016, estimating anticipated prekindergarten student increases for FY2016 will allow the ADM counts to be associated with the increased prekindergarten costs in the FY2016 district budget, mitigating the increase in the homestead tax rate. However, there will be reconciliation the following year between the actual FY2016 prekindergarten count and the estimated prekindergarten count. **Making conservative**