

April 22, 2016

Consideration of proposed subsection (f) to 16 V.S.A. § 2958

(Residential Placement)

Senate Committee on Education

Jim DesMarais

Legislative Council

Statutory Framework

16 § 2942. DEFINITIONS--Vermont

As used in this chapter

* * *

(2) "Special education" means, to the extent required by federal law, specially designed instruction, at no cost to parents or guardian, to meet the unique educational needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes "related services" as defined in federal law.

* * *

(4) "Federal law" means the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1485, and its implementing regulations, as amended from time to time.

(5) "Residential placement" means the placement of an eligible child, as part of an individualized education program, in a 24-hour residential facility within or outside Vermont that provides educational services consistent with the child's program.

34 C.F.R. § 300.39—Federal law—Definition of “special education”

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;

* * *

IDEA § 602(26)-Federal law--Definition of Related services.

(A) In general.--The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Issue

Federal and Vermont Law require that a child with qualifying disability receive a free and appropriate public education in the least restrictive environment, in accordance with

his or her IEP. These laws also require consideration of residential placement, including home-based facilities, when part of the IEP.

However, these laws do not contemplate funding for capital improvements to a residential or home-based facility in order to accommodate the child. The definition of “special education” is focused on instruction, and the definition of “related services” is focused on services related to transportation, and certain developmental, corrective and related supportive services—they do not contemplate capital expenditure to create an appropriate environment.

Accommodation

In order to fund such capital expenditure, Vermont law would need to be amended. In the current draft amendment to H.859, a new subsection (f) is added to 16 V.S.A. § 2958 (Residential Placements) to read:

(f) When a residential placement is determined to be necessary in accordance with this section, an appropriate Vermont-based residential program, including an appropriate professionally staffed home or community-based setting, if one exists, shall be considered as a least restrictive environment before an out-of-state placement is considered.

As noted above, consideration of home based placement is already required by federal law which is incorporated into Vermont law (however, IDEA is up for renewal this year). The proposed subsection (f) does not address the issue of funding for capital costs to improve a residential or home based facility in order to accommodate the child. In order to do so, this subsection could further be amended to read:

(f) When a residential placement is determined to be necessary in accordance with this section, an appropriate Vermont-based residential program, including an appropriate professionally staffed home or community-based setting, shall be considered as a least restrictive environment before an out-of-state placement is considered. In the event that improvements to a facility housing, or that could house, a Vermont-based residential program are necessary in order to reasonably accommodate the child and services required, the Secretary shall evaluate the cost of these improvements, together with the overall costs of the in-state residential placement, as compared to the overall costs of an out-of-state placement. To the extent that the total costs of the in-state placement are equal to or less than the out-of-state placement, and the in-state placement is determined to be the least restrictive environment, the Secretary is authorized to provide funding for such improvements to the facility as may be necessary to reasonably accommodate the child and services required.