

Explanation of Legislative Proposals

Sec. 1. Section 176 requires post-secondary schools to secure a certificate of degree-granting authority from the State Board but exempts certain accredited schools from this requirement, including Burlington College. Burlington College ceased to operate as of December 31, 2016. We propose the legislature remove it from the list of exempt postsecondary schools since it no longer exists.

Sec. 2. Section 165(b) requires the Secretary to determine *every two years* whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. In order to comply with the Federal law known as No Child Left Behind (NCLB), session law was enacted to authorize the Secretary to determine compliance with State standards *annually*. NCLB was replaced by the Every Student Succeeds Act (ESSA) in 2016. Because ESSA also requires *annual* review, the proposal is to amend the codified law - section 165(b) - to provide for an annual determination rather than continue to amend session law.

Sec. 3. In the 2016 session 16 V.S.A § 43 was amended to make the supervisory union – and not the school district - the local education agency for the purposes of determining student performance and application of consequences for failure to meet standards and for provision of compensatory and remedial services pursuant to 20 U.S.C §§6311-6318. This requires a change to 16 V.S.A § 563 which still gives this duty to the school board of a district. That specific duty should be deleted.

Sec. 4. Under current law, a state-placed student is educated by the school district in which the student is living unless an alternative is agreed upon by the Secretary.

Similarly, under current law the residence of a child of homeless parents is *where the child temporarily resides* unless the parents and another school district agree that that attendance there will be in the best interest of the child and transportation will not be unduly burdensome to the district.

Under the Federal Every Student Succeeds Act (amending McKinney-Vento Act) state and local education agencies must adopt policies to ensure that keeping a homeless child in the “school of origin” is in the child’s best interest unless the parents decide otherwise.

Subsections (c) and (e) are amended to conform to the federal law by changing the presumption from where the child temporarily resides to the school of origin. The amendment to (e) also removes the condition of transportation not being unduly burdensome.

This will mean that a state-placed student and the child of homeless parents who is in placed in another district will have to be transported back to the school of origin. Under current law, the Department of Children and Families covers the cost of transportation in DCF custody. This will continue. The cost of transportation for students in custody but not with DCF falls on the

districts under current law. This amendment will mean an additional cost in some cases for the districts.

There is a small population of students that is “state-placed” but is not in the custody of DCF. These students may be in the custody of a parent or a legal guardian, but are placed in therapeutic foster homes or developmental homes by a community mental health agency or a community developmental services agency. The law does not change for these students and paragraph (c)(3) restates existing law.

Sec. 5 and 6. Repeals a provision relating to early college enrollment and reenacts it in the Flexible Pathways subchapter which includes early enrollment as one of the Flexible Pathways. This is simply a change to bring all flexible pathways options into the same section of statute.

Sec. 7 and 8. Repeals report and appropriations language relative to early college enrollment and reenacts it in the Flexible Pathways subchapter. This is simply a change to bring all flexible pathways options into the same section of statute.

Sec. 9. Increases the per diem payment to members of the advisory council on special education to bring it in line with remuneration paid to other boards.

Sec. 10. Under current law, students and parents may not be charged tuition for dual enrollment courses. We propose that the law be clarified so that fees associated with a dual enrollment course – laboratory fees for instance – cannot be charged back either. This is to ensure that cost is not a barrier for students wanting to pursue this flexible pathway.

Secs. 11-14.

Background: Act 166 (16 V.S.A § 829) expanded publicly funded education to prekindergarten and directs the school district of residence, at the parent’s option, to enroll the student in a program it operates or pay tuition to a prequalified private provider or a public school outside the district.

Superintendents are required by 16 V.S.A § 255 to request criminal record information for any person directly under contract to school district who may have unsupervised contact with school children. This request to the Vermont Crime Information Center must be accompanied by a set of the person’s fingerprints. Parents may choose a private kindergarten provider whose employees are not employed by the district. If the district has a contract with a provider, all such employees must pass such a criminal record check. Until this is done, a pre-kindergarten provider is not eligible for tuition payments. Moreover, a prekindergarten program that receives students from multiple districts must undergo each district’s record check.

At the same time the Child Development Division of the Agency of Human Services (CDD) licenses child care providers and is required by federal law to perform fingerprint-supported criminal background checks of child care providers. Federal law does not allow the full background check to be shared with third parties. However, CDD may consistent with federal

law verify to superintendents the names of employees who have been cleared and that all employees of a particular pre-kindergarten program have been cleared.

Proposal: To standardize criminal record checks across all school settings and eliminate overlapping requirements for fingerprint supported background space, the Agencies of Education and Human Services have worked on this language that proposes a three-prong approach: (1) AOE is responsible for fingerprinting and criminal checks for all teacher licensed to teach in the State of Vermont; (2) Superintendents and headmasters are responsible for fingerprinting and criminal record checks of all public and independent school employees and contractors except for licensed teacher and private prekindergarten providers; (3) DCF/CDD is responsible for fingerprinting and criminal checks for all private prekindergarten providers. The same standard for will be used by all entities. That standard is what DCF must follow in order to comply with the federal Child Care and Development Block Grant Act of 2014 and CDD rules.

Section by section summary:

Sec. 11. Affirms the state policy that every person who has unsupervised contact with students must pass to a fingerprint supported criminal record check, clearly assigns responsibility among AEO, CDD, superintendents and headmasters; and eliminates duplication of record checks.

Sec. 12. Outlines process that AOE, superintendents and headmasters must follow for criminal record checks (mirrors DCF requirements); specifies convictions that result in a person being denied licensure or employment in a school setting; reiterates that record checks only have to be repeated every 5 years; prohibits public release of personally identifiable criminal record check information; and provides an process for appealing the accuracy of a criminal record check.

Sec. 13. Amends 16 V.S.A. § 255 to align with the new 16 V.S.A § 255a. Section 255 provides detailed procedural steps for superintendent and headmasters to follow when requesting criminal record checks, some of these are redundant or inconsistent with the new section 255a. Specifically, deletes language related to secondary dissemination of record check information that is prohibited by federal law; deletes requirement for Vermont sex offender registry check as this is now in §251a; creates an exception for participants in flexible pathways programs.. Flexible Pathways statute was enacted to expand high school educational experiences into more innovative and applied settings, promote opportunities for student to become ready for postsecondary education, and to increase the rates of high school completion. Flexible Pathways include work-based learning opportunities, internships, and early college programs. This excepts programs and jobs created under Flexible Pathways from the background checks because (1) § 255 was enacted prior to the Flexible Pathways legislation and there was no discussion indicating that it is intended to apply to work-based learning; and (2) if §255 did apply in these cases, it would make it difficult to find partners and require an extraordinary amount of additional fingerprinting. The students involved in Flexible Pathways are generally in

their later years of high school, and beginning to transition into the work force. Schools also involve parents and guardians in discussion and selection of placement sites. The change would facilitate work-based learning opportunities.

Sec. 14. Amends 33 V.S.A. § Clarifies that CDD may not share record check information with an employer provider other than fact of clearance; and requires DCF to accept AOE and superintendents and headmaster clearances.

Sec. 15. Effective dates.

Generally these proposal will be effective upon passage.

Section (4) (State-placed student and homeless students) is effective with respect to the 2017-2018 school year. Sections 11-14 (criminal background checks) are effective for persons hired after June 30, 2017 and persons licensed (new or renewal) after June 30, 2017. (Note: CDD will continue its fingerprinting so that it is in compliance with federal law for all the preK programs before July 1. After July 1, any five year renewals of school employees working in preK will be picked up by superintendents or headmasters. AOE will pick up any licensed teachers that we may have already fingerprinted once their licenses are up for renewal. This means that any current public or private school employees are “grandfathered in” and will not be fingerprinted under this new standard unless and until they change jobs (or are a teacher).