

Proposed Changes to Education Statutes

Burlington College

Sec. 1. 16 V.S.A § 176(d) shall be amended to read:

(d) Exemptions. The following are exempt from the requirements of this section except for the requirements of subdivision (c)(1)(C) of this section:

(4) Postsecondary schools that are accredited. The following postsecondary institutions are accredited, meet the criteria for exempt status, and are authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate: Bennington College, ~~Burlington College~~, Champlain College, College of St. Joseph, Goddard College, Green Mountain College, Landmark College, Marlboro College, Middlebury College, New England Culinary Institute, Norwich University, Saint Michael's College, SIT Graduate Institute, Southern Vermont College, Sterling College, Vermont College of Fine Arts, and Vermont Law School. This authorization is provided solely to the extent necessary to ensure institutional compliance with federal financial aid-related regulations, and it does not affect, rescind, or supersede any preexisting authorizations, charters, or other forms of recognition or authorization.

educational opportunities

Sec. 2. 16 V.S.A § 165(b) is amended to read:

(b) ~~Every two years~~ Annually, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, he or she shall describe in writing actions that a district must take in order to meet either or both sets of standard and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient progress ~~by the end of the next~~ within two years ~~period~~ of the determination, the Secretary shall recommend to the State Board one or more of the following actions:

local education agency

Sec. 3. 16 V.S.A. § 563 is amended as follows:

§ 563. Powers of school boards; form of vote

The school board of a school district, in addition to other duties and authority specifically assigned by law:

~~(26) Shall carry out the duties of a local education agency, as that term is defined in 20 U.S.C. § 7801(26), for 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.~~

*****Stated-placed and homeless students*****

Sec. 4. 16 V.S.A § 1075(c) and (e) are amended to read:

(c) State-placed students.

(1) A State-placed student in the legal custody of the Commissioner for Children and Families, other than one placed in a 24-hour residential facility and except as otherwise provided in this subsection, shall be educated by ~~the school district in which the student is living~~ the student's school of origin, unless ~~an alternative plan or facility for the education of the student is agreed upon by Secretary~~ the student's education team determines that it is not in the student's best interest to attend the school of origin. The student's education team shall include, at a minimum, the student, the student's parents and foster parents, the student's guardian ad litem and Educational Surrogate Parent, representatives of both the school of origin and potential new school and a representative of the Family Services Division of the Department for Children and Families. In the case of a dispute ~~as to where a State-placed student is living,~~ the Secretary shall conduct a hearing to determine which school district is responsible for educating the student about whether it is in the student's best interest to attend the school of origin, the commissioner of the Department for Children and Families shall make the final decision. For purposes of this section, "school of origin" means the school in which the child was enrolled at the time of placement into custody of the Commissioner of Children and Families, or in the case of a student already in the custody

of the Commissioner of the Department for Children and Families, the school the student most recently attended. The Secretary's decision shall be final.

(2) If a student is a State-placed student pursuant to subdivision 11(a)(28)(D)(i)(I) of this title, then the Department for Children and Families shall ~~assume responsibility for~~ be responsible for the student's transportation to and from school, unless the receiving district chooses to provide transportation.

(3) A State-placed student not in the legal custody of the Commissioner for Children and Families, other than one placed in a 24-hour residential facility and except as otherwise provided by in this subsection, shall be educated by the school district in which the student is living unless an alternative plan or facility for the education of the student is agreed upon by the Secretary. In the case of dispute as to where a State-placed student is living, the Secretary shall conduct a hearing to determine which school district is responsible for educating the student. The secretary's decision shall be final.

(e) For the purposes of this title, the legal residence or residence of a child of homeless parents is ~~where the child's temporarily resides~~ school of origin, as defined in subsection (a)(1)(C) of this section, unless the parents and another school district agree that the child's attendance in school in that school district will be in the best interests of the child ~~in that continuity of education will be provided and transportation will not be unduly burdensome to the school district.~~ A "child of homeless parents" means a child whose parents:

(1) lack a fixed, regular, and adequate residence, or

(2) have a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations such as public assistance hotels, emergency shelters, battered women's shelters, and transitional housing facilities, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

early college

Sec. 5. REPEAL

16 V.S.A § 4011(e)(early college) is repealed.

Sec. 6. 16 V.S.A § 946 is added to read:

§ 946. Early college.

(a) For each 12th grade Vermont student enrolled, the Secretary shall pay an amount equal to 87 percent of the base education amount to:

(1) the Vermont Academy of Science and Technology (VAST); and

(2) an early college program other than the VAST program that is developed and operated or overseen by one of the Vermont State Colleges, by the University of Vermont, or by an accredited private postsecondary school located in Vermont and that is approved for operation by the Secretary; provided, however, when making a payment under this subdivision

(B), the Secretary shall not pay more than the tuition charged by the institution.

(b) The Secretary shall make the payment pursuant to subdivision (1) of this subsection directly to the postsecondary institution, which shall accept the amount as full payment of the student's tuition.

(c) A student on whose behalf the Secretary makes a payment pursuant to subdivision (1) of this subsection:

(1) shall be enrolled as a full-time student in the institution receiving the payment for the academic year for which payment is made;

(2) shall not be enrolled concurrently in a secondary school operated by the student's district of residence or to which the district pays tuition on the student's behalf; and

(3) shall not be included in the average daily membership of any school district for the academic year for which payment is made; provided, however, that if more than five percent of the 12th grade students residing in a district enroll in an early college program, then the district may include the number of students in excess of five percent in its average daily membership; but further provided that a 12th grade student enrolled in a college program shall be included in the percentage calculation only if, for the previous academic year, the student was enrolled in a school maintained by the district or was a student for whom the district paid tuition to a public or approved independent school.

(d) A postsecondary institution shall not accept a student into an early college program unless enrollment in an early college program was an element of the student's personalized learning plan.

Sec. 7. REPEAL

16 V.S.A § 4011a (early college program; report; appropriations) is repealed.

Sec. 8. 16 V.S.A § 947 is added to read:

§ 947. Early college program; report; appropriation

(a) Notwithstanding 2 V.S.A. § 20(d), any postsecondary institution receiving funds pursuant to subsection 946 of this title shall report annually in January to the Senate and House Committees on Education regarding the level of participation in the institution's early college program, the success in achieving the stated goals of the program to enhance secondary students' educational experiences and prepare them for success in college and beyond, and the specific results for participating students relating to programmatic goals.

(b) In the budget submitted annually to the General Assembly pursuant to 32 V.S.A. chapter 5, the Governor shall include the recommended appropriation for all early college programs to be funded pursuant to subsection 4011(e) of this title, including the VAST program, as a distinct amount.

advisory council on special education

Sec. 9. 16 V.S.A § 2945(c) is amended to read:

(c) The members of the Council who are employees of the State shall receive no additional compensation for their services, but actual and necessary expenses shall be allowed

State employees, and shall be charged to their departments or institutions. The members of the Council who are not employees of the State shall receive a per diem compensation of ~~\$30.00~~50.00 per day for each day of official business and reimbursement for actual and necessary expenses at the rate allowed State employees.

Sec. 10. 16 V.S.A § 944(b)(2) is amended to read:

(2) An eligible student may enroll in up to two dual enrollment courses prior to completion of secondary school for which neither the student nor parent shall be required to pay tuition, laboratory fees or other costs and fees directly related to participating in the course, other than travel costs and fees. A student may enroll in courses offered while secondary school is in session and during the summer.

Sec. 11. 16 V.S.A § 251 is amended to read:

§ 251. Policy

(a) It is the policy of the State of Vermont to use criminal record checks to deter abuse and exploitation of school children and to do so in a manner that protects, as much as is practicable, the privacy of those subject to such checks. Accordingly, every person who has contact with students in (1) a public school, (2) an approved or recognized independent school, or (3) a prekindergarten program, whether as an operator, employee, or contractor, will undergo a fingerprint supported FBI criminal record check prior to having any unsupervised contact with children.

(b) With respect to licensed teachers in any setting, the Agency of Education will conduct a record check at the time the person is licensed to teach in the State of Vermont and at the time the person's license is renewed following the requirements in section 251a of this title.

(c) With respect to kindergarten through high school and notwithstanding any other provision of law, the fingerprint supported criminal record check shall be initiated as follows:

(1) If the person is not a Vermont licensed teacher but is employed by or under contract to a public school the superintendent of the district will conduct the record check at the time of hire pursuant to sections 251a and 255 of this title.

(2) If the person is not a Vermont licensed teacher and is employed by or under contract to an approved or recognized independent school, the headmaster of that school will conduct the record check pursuant to sections 251a and 255 of this title.

(d) With respect to prekindergarten programs prequalified pursuant to section 829 of this title or in partnership pursuant to section 829(e)(1) of this title, the fingerprint supported criminal record check shall be initiated as follows:

(1) If the person is not a Vermont licensed teacher but is employed by or under contract to a public school, with the exception of contractors covered in subparagraphs

(2) and (3) below, the superintendent of the district will request the record check pursuant to sections 251a and 255 of this title.

(2) If the person is not a Vermont licensed teacher but is employed by or under contract to a recognized or approved independent school, the headmaster will request the record check pursuant to sections 251a and 255 of this title.

(3) If the person is not a Vermont licensed teacher and is not employed by or under contract to a recognized or approved independent school and is employed by a private program registered or licensed by the Child Development Division, the Department for Children and Families will request the record check pursuant to 33 V.S.A. §152 and rules adopted by the Department for Children and Families.

(e) The Agency of Education, Department for Children and Families, superintendents and headmasters shall maintain a registry accessible only to the other parties named in this subsection for the purpose of sharing information about whether a person has a qualifying criminal record check clearance. Each of the parties named in this subsection shall accept qualifying criminal background check clearances from the other named parties.

(f) An individual required to submit to a criminal record check by the Agency of Education, Child Development Division of the Department for Children and Families, superintendent or headmaster shall not be required to undergo fingerprinting for a criminal record check if the individual underwent a qualifying background check pursuant to this section within the preceding five years, subject to the limitations in section 251a(d) of this title.

(g) The requirements of this section shall not apply with respect to a school district's partners in any program authorized or student placement created by Subchapter 2 of Chapter 23 of Title 16.

Sec. 12. 16 V.S.A. § 251a is added to read:

§251a Background checks and access to records

(a) Pursuant to section 251 of this title, criminal background checks conducted by the Agency of Education, superintendents and headmasters shall include:

(1) A fingerprint supported Vermont Crime Information Center and FBI criminal record check;

(2) A search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006;

(3) A search of the Vermont Child Protection Registry;

(4) A search of the Vermont Adult Abuse Registry;

(5) A search of the child abuse and neglect registries, repositories, or databases, if available, in in each State where the person resided during the preceding five years;
and

(6) A search of the Vermont Case Access System.

(b) The Agency of Education shall deny licensure and superintendents and headmasters shall deny employment or refuse to contract with a person:

(1) who is required to complete a background check and who refuses or knowingly makes a materially false statement in connection with such background check;

(2) is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry;

(3) is convicted of a felony involving:

(A) Murder,

(B) Child abuse or neglect,

(C) A crime against children, including sexual activity or child pornography,

(D) Spousal abuse,

(E) A crime involving rape or sexual assault,

(F) Kidnapping,

(G) Arson,

(H) Physical assault or battery, or

(I) A drug related offense committed during the preceding five (5) years;

(4) is convicted of a misdemeanor offense against a child or another person involving:

(A) Violence,

(B) Child abuse or neglect,

(C) Child Endangerment,

(D) Sexual assault or activity,

(E) Child pornography, or

(F) Other violent bodily injury;

(5) is convicted of fraud;

(6) is convicted of embezzlement;

(7) has been found by a court to have abused, neglected or mistreated a child, elderly or disabled person, or animal,

(8) has had a report of abuse or neglect substantiated against them under Chapters 49 or 69 of Title 33; or

(9) has had a report of child abuse or neglect that is substantiated against them in another State.

(c) The Agency of Education, superintendents and headmasters, in their sole discretion, may allow for a waiver of the disqualifying convictions and findings listed in this subparagraph. The burden of proof shall be on the person requesting the waiver to prove rehabilitation and that he or she is suitable for licensure or employment.

(1) felony convictions for drug-related offenses under subparagraph (b)(3)(I),

(2) misdemeanor convictions of bodily injury under subparagraph (b)(4)(F), or

(3) convictions of fraud under subparagraph (b)(5); or

(4) convictions of embezzlement under subparagraph (B)(6).

(d) A person subject to fingerprinting and background checks by a superintendent or headmaster, or by the Child Development Division of the Department for Children and Families pursuant to section 251 of this title, shall not be required to submit to a criminal record check if the person underwent a qualifying background check pursuant to section 251 of this title within the preceding five years and the person has not been separated from employment by a public school, private school or a private child care provider licensed by the Child Development Division in Vermont for more than 180 consecutive days since the previous qualifying criminal record check.

(e) Criminal background checks required to be initiated by a superintendent or headmaster must be requested before a person begins working in a public or private school and

the person must be supervised at all times by an individual with a qualifying background check until the person has been cleared.

(f) The Agency of Education, superintendents and headmasters shall take all steps necessary to complete criminal record checks within 45 days after a request has been submitted.

(g) Criminal record check results for any person shall not be publicly released, except that aggregated data by crime from background check results may be released as long as such data is not personally identifiable. Pursuant to section 251(e), the Agency of Education, Department for Children and Families, superintendents and headmasters shall share among each other criminal record check clearance information, only if necessary for the requesting entity to perform its lawful duties. The subject of the background check is entitled to a copy of the background check.

(h) Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont Crime Information Center pursuant to rules adopted by the Commissioner of Public Safety.

Sec. 13. 16 V.S.A § 255 is amended to read:

§ 255. Public and independent school employees; contractors

(a) Superintendents, headmasters of recognized or approved independent schools, and their contractors shall request criminal record information for the following:

(1) ~~the~~ any person, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title, a superintendent or headmaster is prepared to employ or recommend for any full-time, part-time, or temporary employment;

(2) any person, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title directly under contract to an independent school or school district who may have unsupervised contact with school children;

(3) any employee of a contractor under contract to an independent school or school district, other than a teacher licensed under Chapter 51 of Title 16 or a person cleared by Department of Children and Families pursuant to section 251 of this title who is in a position that may result in unsupervised contact with school children;

(4) any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont Crime Information Center pursuant to section 251a of this title. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Crime Information Center that shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d)(1) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the superintendent or headmaster a notice that no record exists or, if a record exists, a copy of any criminal record.

(2) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record that is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record ~~relating to any crimes of a sexual nature involving children~~, the Vermont Crime Information Center shall send this record to the Secretary who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime ~~of a sexual nature involving children~~ specified in 16 V.S.A. § 251a(b) or includes a report as specified in that section.

(e) Information received by a superintendent or headmaster under subsection (d) of this section shall be forwarded as follows:

(1) In the case of a request other than one made on behalf of a contractor, the superintendent or headmaster shall forward a copy of the information to the person about whom the request was made.

(2) In the case of a request made on behalf of a contractor, the superintendent or headmaster shall inform the contractor in writing either that no record exists or that a

record does exist but shall not reveal the content of the record to the contractor. The contractor shall then forward a copy of the information received to the person about whom the request was made.

(f) Information sent to a person by the Secretary, a headmaster, a superintendent, or a contractor under subsection (e) of this section shall be accompanied by a written notice of the person's rights under subsection (g) of this section, a description of the policy regarding maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to comply with future criminal record check requests pursuant to section 256 of this title.

~~(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:~~

~~(A) sign a form authorizing the Vermont Crime Information Center to release a detailed copy of the criminal record to the person; or~~

~~(B) decline or resign employment.~~

~~(2) Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont Crime Information Center pursuant to rules adopted by the Commissioner of Public Safety.~~

~~(h) A superintendent or headmaster shall request and obtain information from the Child Protection Registry maintained by the Department for Children and Families and from the Vulnerable Adult Abuse, Neglect, and Exploitation Registry maintained by the Department of~~

~~Disabilities, Aging, and Independent Living (collectively, the Registries) for any person for whom a criminal record check is required under subsection (a) of this section. The Department for Children and Families and the Department of Disabilities, Aging, and Independent Living shall adopt rules governing the process for obtaining information from the Registries and for disseminating and maintaining records of that information under this subsection.~~

~~(i) A person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3 shall not be eligible for employment under this section.~~

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the Registries pursuant to the provisions of this section and section 251a of this title prior to offering employment to a headmaster candidate.

(k) The requirements of this section shall not apply with respect to a school district's partners in any program authorized or student placement created by Subchapter 2 of Chapter 23 of Title 16.

Sec. 14. 33 V.S.A. §152 is amended to read:

§ 152. Access to records

(a) The Commissioner may obtain from the Vermont Crime Information Center the record of convictions of any person to the extent required by law or the Commissioner has determined by rule that such information is necessary to regulate a facility or individual subject to regulation by the Department or to carry out the Department's child protection obligations

under chapters 49-59 of this title. The Commissioner shall first notify the person whose record is being requested.

(b) The owner or operator of a facility licensed or registered by the Department may ask the Commissioner for the record of convictions and the record of substantiated reports of child abuse of a current employee or a person to whom the owner or operator has given a conditional offer of employment. The request shall be in writing and shall be accompanied by a release signed by the current or prospective employee. The owner or operator shall inform the current or prospective employee that he or she has the right to appeal the accuracy and completeness of the record. Upon receiving a request under this subsection, the Commissioner shall ask the Vermont Crime Information Center for the record of convictions of the current or prospective employee.

(c) If the person has a record of convictions, the Commissioner shall provide the owner or operator with a copy of the record, unless otherwise prohibited by law. If the person has a record of substantiated reports of child abuse, the Commissioner shall inform the requesting owner or operator that such record exists.

(d) Information released to an owner or operator under this section shall not be released or disclosed by the owner or operator to any other person. Release or disclosure of such information by an owner or operator may result in the loss of the license or registration.

(e) As used in this section:

(1) "Commissioner" means the Commissioner for Children and Families or the Commissioner's designee.

(2) "Employee" shall include volunteers.

(3) "Substantiated reports of child abuse" means reports of child abuse substantiated under section 4915 of this title.

(4) "Volunteer" means an individual who, without compensation, provides services through a public or private organization.

(f) The Commissioner shall accept clearance of a criminal record checks conducted under sections 251 and 251a of title 16 by the Agency of Education or a superintendent of a school district relating to individuals in facilities licensed or registered by the Department.

Sec. 15. EFFECTIVE DATES.

(a) This section and sections 1 through 3 and 5 through 10 shall be effective upon passage.

(b) Section 4 (State-placed students) shall be effective beginning with the 2017-2018 school year.

(c) Sections 11 through 14 (criminal background checks) shall apply to persons hired or contracted with after June 30, 2017 and to persons who apply for or renew a teaching or child care provider license after June 30, 2017.

2/8/17