

TESTIMONY PROVIDED TO: House Education Committee  
FROM: Mark Tucker, Superintendent, Washington Northeast Supervisory Union  
TOPIC: S.229 An act related to State Board approval of independent schools  
Date: April 11, 2018

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Thank you for the opportunity to speak to you today regarding the provision of special education services to Vermont students attending an independent school at public expense.

To be clear, I am *not* speaking against the intent or spirit of this legislation, which I realize has come after a great deal of discussion and negotiation between the State Board and the Independent Schools in Vermont. I do have particular concerns as to the way this legislation, as passed by the Vermont Senate, aims to address what are likely to be staffing difficulties in the smaller independent schools as they seek to meet the requirement to enroll and provide services to students identified as needing special education services (i.e., students who are eligible for an Individualized Education Plan and a free and appropriate public education, hereafter, "IEP students").

**Specific Concerns with 16 V.S.A. § 2973 Sec. 3**

“(d) If an approved independent school enrolls a student under subdivision (a)(1) of this section but does not have the staff or State Board certification to provide special education services in the specific disability category that the student requires, then:

(2) The LEA shall, on an interim basis and at its cost, provide such additional staff and other resources to the approved independent school as are necessary to support the student until such time as the approved independent school is able to directly provide these services and has the appropriate State Board certification; provided, however, that the school shall have all required staff and resources and the appropriate State Board certification within nine academic months after the date of the student’s initial enrollment. I have a number of concerns about this subsection, in terms of the ability of a District or Supervisory Union to meet its obligations therein:”

- LEAs have always assumed the excess costs for special education students attending an independent school, if it is paying tuition to that school. In fact, the larger academies (Saint Johnsbury Academy, Lyndon Institute, Thetford Academy, et al) have traditionally offered a full range of special education supports and have almost always, in my experience, accepted students regardless of need.
- A large academy with several hundred enrolled students and a proportionally larger subset of IEP students has an easier time achieving the economies of scale needed to build up and maintain a special education “department.” The challenge has always been with the smaller independent schools, and nothing in this legislation will resolve that challenge.
- Requiring LEAs to provide special education services on an interim basis while the independent school develops its own in-school resources *sounds* like a reasonable compromise, but it is fraught with challenges. I can summarize this as

“too much need, spread too thin, for too few available staff.” There is a significant shortage of qualified (and quality) special education teachers and related service providers (Speech-Language Pathologists, Occupational Therapists, etc.) in the State of Vermont. This shortfall is especially evident in the more-rural sections of Vermont. We have difficulty finding adequate qualified staff to meet the needs of students enrolled and attending our public schools. This change to §2973 creates a situation with a number of potentially unpalatable outcomes, outlined below:

- The public schools will be competing with the smaller independent schools to hire from a shallow pool of available candidates, exacerbating our ability to meet the needs of our publically-enrolled students, and pitting us against our independent school partners in competition for staff. The Agency will need to pay careful attention in its rate setting process that it does not create a system in which one party or the other has a financial advantage or disadvantage in hiring qualified staff;
- The smaller independent schools with a limited enrollment of special education students will find it difficult to justify the business decision of hiring full time staff to serve the needs of one or two students – and again, depending on how the service rate setting obligations of the Agency are met elsewhere in this amendment, the LEA may be forced to pay for staffing that is underutilized at the independent school;
- Where an independent school has not or cannot meet its obligations to provide qualified staff to instruct special education students, the LEA will be forced to assign school-based special education specialists to travel to (each of) the independent school(s) in their area in an effort to deliver required special education services at the independent school(s). In many cases, especially in the more-rural areas, time on the road traveling among geographically-dispersed independent school sites could be onerous. Time in the car is lost time that would better be spent with students. (In fact, this is the same challenge we face as a result of Act 166 – we cannot afford to send specialists to all of the private daycares, forcing parents to bring their child to school for services, at great inconvenience);
- As written, an independent school could, in theory, enroll a special needs student in September, force the LEA to assign its staff to meet the needs of the student for the bulk of the school year (9 months, Sep-May), and then . . . what? Disenroll the student because they still cannot meet their obligation to develop their own staff as required? Disenroll the student for the summer and start the process over again in September with the same and/or a new set of students? This language would seem to relieve the independent school of having to worry about meeting staffing needs, and this committee should give consideration to a different, shorter time frame, at least;

- As a practical matter, it needs to be recognized and acknowledged that any action by the LEA under this amendment that involves our sending specialists to schools will cost more than having these same students enrolled in the public school. I mean this as a practical observation, and not as an indictment in and of itself of the role of independent schools in the Vermont education milieu.
- As written, it seems that all of the responsibility for “fixing” this problem with enrollment of special education students at small independent schools seems to have been heaped on the LEA. I do not object to paying for excess costs for special education students, but the financial exposure to the LEA is potentially large as our obligations are outlined in this amendment.
- Finally, I worry about consequences if the LEA is unable to meet the obligation to provide services to a special education student enrolled at a small, independent school that cannot serve the student with its own in-school staff. This could very well happen if the LEA is unable to provide sufficient staffing to meet its in-school students needs *and* send staff to an independent school(s) to serve students there, an eventuality of particular concern in rural Districts. Can we be sued by the parents? The independent school? Some sort of language indemnifying the LEA that makes a good-faith effort to meet its obligations under this legislation is warranted.

In summary, I am not saying that independent schools should not be enrolling IEP students. What I *am* saying is that public schools, especially small, rural public schools, are challenged to meet the needs of their enrolled IEP students, due to a shortfall of qualified special education staff. This legislation would seem to recreate the problem for small, independent schools while placing the responsibility for fixing it onto the LEA. Finally, if this is the best we can do, it should be recognized that this is certain to increase the overall costs for LEAs and we need to be able to recoup these costs in the funding formula, in whatever form it takes over the next few years and beyond.

Respectfully submitted,

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