



To: Senate Education Committee
From: Vermont School Boards Insurance Trust
Laura Soares, CEO/President
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Subject: H.897 Date of Testimony: April 4, 2018

The VSBIT Multi-Line Program provides insurance coverage for more than 80% of the public Pre-K through 12 schools in the State of Vermont. There is some proposed language in H.897 that gives us some concern and potentially exposes the public schools (LEA) to liabilities.

The Senate Education Working Version; draft 1.1 beginning on page 65; line 11 states:

(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:

(1) The LEA, in consultation with the approved independent school and the Agency of Education, shall determine what special education services and supports the school is able to provide to the student.

(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.

(3) If the school does not 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 as required under subdivision (2) of this subsection (d), then, in the event that the State Board determines that the school has failed to make good faith and reasonable efforts to secure the required staff, resources, and certification, the State Board may take any action that is authorized by section 166 of this title.

Given the above, it is possible that there would be a gap in services which would result in an IEP Due Process Complaint being filed with the Agency of Education by the parent/guardian of the student receiving services. Based upon the language of the bill, it appears as though the LEA (the public school) would be held responsible for continuation of those services despite the staffing and/or certification of the independent school being out of LEA control.

It is our assertion that the language beginning on line 7 of page 64 further supports the notion that the independent school has control over potential changes to the IEP and services provided yet continues to hold the LEA responsible for the IEP. It states:

*(D) agreeing to communicate with the **responsible LEA** (bold/underline added for emphasis) concerning:*

- (i) the development of, and any changes to, the IEP;*
- (ii) services provided under the IEP and recommendations for a change in the services provided;*

If the bill is going to make the LEA responsible for the special education services then we recommend that the independent school should not have the ability to make changes to the IEP or the services provided. If the language is not modified, then we would request clarification as to how dispute resolution would be handled and the mechanism used to address such situations. In the current format it is unclear how a dispute in implementation or services of the IEP would be resolved.

The other area of concern surrounds the requirement of the LEA to provide staff and resources to the independent school for a potential timeframe of up to nine months. Such a scenario would result in LEA employees having no direct supervision from the LEA while being placed at the independent school. This would result in potential issues in two areas: employment practices and workers' compensation.

With staff being placed at the independent school, the LEA would not have direct supervision of the employee and limited ability to ensure that all aspects of the collective bargaining agreement were being abided by for their employees. The collective bargaining agreement outlines employee rights & responsibilities, access to employer services, performance management, assignment of work, and disciplinary actions all of which would potentially expose LEA's to grievances for situations that they have very limited ability to control or effect change.

Having limited to no ability to control the work environment also exposes LEA's to workers' compensation exposures. The LEA would not have an ability to ensure that the work environment is safe and reasonably free of hazards yet would be responsible for compensable injuries that occur. If the employee ended up suffering an injury that resulted in indemnity benefits (lost time) then the school would be required to find a replacement for that employee for the duration of their time out of work. This would present a staffing issue for the IEP services and expose the LEA to an IEP Due Process Complaint as previously discussed.

We greatly appreciate the time to outline our concerns related to current language contained in H.897.