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To: Senate Education Committee
From: Nicole Mace, Executive Director
Re: Miscellaneous Education Bill
Date: February 22, 2017

I would like to speak to two provisions of the Agency of Education's proposals for the miscellaneous education bill in my testimony today. The first relates to criminal background checks; the second relates to fees associated with dual enrollment courses.

Criminal Record Checks

With respect to the proposed changes to the statutes governing criminal record checks, I want to start by stating that these changes are necessitated by the fact that we have decided to provide prekindergarten through a mixed delivery system using public and private providers, jointly overseen by two state agencies.

In a mixed delivery model, with two separate state and federal regulatory systems, and significant variation in the practices of the providers and the entities responsible for administering the program, opportunities for inefficiencies abound.

With the passage of Act 166, the state expanded the definition of public education to include prekindergarten, which can be provided in a public or private setting. Title 16 now defines "elementary education" as a "program of public school education adapted to the needs of students in prekindergarten, kindergarten, and the first six grades" (16 VSA 11(3)). However, administration of the law is not overseen by the Agency responsible for the public education system. Rather, the system is jointly administered by the Agency of Human Services (AHS) and the Agency of Education (AOE).

The joint administration of this law has not worked well to date. The conflict over fingerprint-supported background checks is an illustration of this. In that instance, AOE and AHS worked for over seven months to determine the best methods to both inform school districts and private providers of the record check requirements and ensure they are fulfilled. They were unable to devise an approach that worked, and

as a result we had a situation where the school year started, private providers were not cleared, and families, school districts, and providers were placed in an untenable position.

Making modifications to the fingerprint statutes is important, but doing so will not resolve the apparent disconnect between AHS and AOE in terms of the ability to administer a public policy construct as complex as this one. The General Assembly should consider having one agency ultimately responsible for administration of the program.

Act 166 has led to a proliferation of bureaucratic oversight over prekindergarten programs, a dynamic that is perfectly illustrated by this issue. In terms of the specific proposals from the AOE and the Child Development Division at AHS (CDD), I would call to your attention that whereas superintendents used to be responsible for ensuring that every adult having unsupervised contact with children was cleared through a fingerprint-supported criminal background check, we now have three entities responsible for overseeing the process: CDD, AOE, and superintendents.

Licensed Employees – The AOE/CDD proposal would have the AOE responsible for overseeing criminal record checks for all licensed employees, and to update checks every five years when an individual’s license is renewed. Superintendents would *no longer be able* to require a fingerprint-supported criminal background check for any new hire. So long as an individual holds a current license, the superintendent must assume they are cleared to have unsupervised contact with children. The proposal does not contemplate how AOE will receive information about criminal records in the 5-year interim period between license renewals. The proposal does appear to allow a superintendent to request background checks *other than* fingerprint-supported background checks, but that could be made more explicit in the language.

Non-Licensed Employees – This essentially maintains the status quo for superintendents, in terms of their obligation to ensure criminal record checks for employees before they have unsupervised contact with children. The major change is that there is now a clear standard whereby a superintendent may not employ or contract with an individual – those who are convicted of the offenses listed in 16 VSA 251a(b). We support a clear minimum standard, but would like the language to specify that this standard shall not preclude a superintendent from making a hiring decision based on additional, locally-defined criteria.

Prekindergarten Employees – This proposal shifts responsibility for criminal record checks for non-licensed, prekindergarten employees away from the superintendent and to CDD. According to the child care information system available through the Child Development Division at AHS, there are 139 prequalified public programs and 233 prequalified private programs eligible to receive preK vouchers. The AOE/CDD proposal means that within public schools that operate prekindergarten programs, superintendents will no longer have autonomy to oversee the criminal record checks of their employees.

While we support the notion of eliminating the responsibility for ensuring fingerprint checks have been conducted in private provider settings, the notion of CDD overseeing school employees is problematic. We believe school districts should maintain responsibility to ensuring their employees have been cleared by a criminal record check, not CDD.

Maintaining Background Check Registries – If school districts are no longer responsible for ensuring their employees have been cleared through the criminal record check process, then there must be an easily accessible and up-to-date database with information about all employees, licensed and non-licensed, who have been cleared through the system. School districts do not have the resources to build a state-wide registry for non-licensed K-12 personnel, yet the language does not allow a superintendent to conduct a fingerprint-supported criminal record check for any employee that has been checked within the past five years. How are they supposed to access that information when an employee changes employers multiple times within a five year period?

Additionally, the law should require CDD and AOE to build, publish and maintain registries of employees who have been cleared through the criminal record check process. Doing so will provide school districts with the assurances they need that their employees and the private providers they contract with are cleared for unsupervised contact with children.

Flexible Pathways – The proposed language to exempt a school district's partners in any flexible pathways program is overly broad and could conflict with local policy and practice for requiring background checks in internship settings where adults have unsupervised contact with students. We suggest modifying 16 VSA 260 to require local policy on supervision of volunteers and work study students to address how flexible pathway partners will be cleared for unsupervised contact with students.

We are in an era of great pressure on publicly-funded programs to respond to taxpayer concerns about quality and cost-effectiveness. The fact that we have to create such a complex regulatory environment to administer prekindergarten calls into question the wisdom of providing this public benefit in the manner we have chosen to provide it.

Dual Enrollment Fees

The proposed language to prohibit parents or students from being required to pay “laboratory fees or other costs and fees directly related to participating in” a dual enrollment course should be clarified to specify who will pay for those fees. 16 VSA 563(14) requires a school board to provide all “text books, learning materials, equipment and supplies.” Does that include these fees, or will these costs be absorbed by the colleges? If the expectation is that the school district will pay the fees, then we believe a fiscal note is needed in order to understand the full impact on the property tax. If school districts are not required to cover these fees, language should be added to make that clear.