



**VCSEA Testimony to Senate Education Committee on S.229:
“An act relating to State Board of Education approval of independent schools”
2-9-18**

Thank you for the opportunity to testify to this committee about VCSEA’s priorities for students with disabilities within independent schools, and to share some thoughts about the specifics of S.229 as amended. I was VCSEA’s representative on the Approved Independent Schools Study Committee from May to December 2017 and continue to represent VCSEA on this issue. VSA, VSBA and VCSEA presented to the Study Committee a shared perspective on the charge given the committee.

I will share briefly the five major areas of VCSEA concern and testimony regarding students with disabilities and independent schools over the past five years.

1. Background:

- VCSEA believes strongly in the rights of students with disabilities and in their need for protection against discrimination. Access to publicly funded community independent schools for students with disabilities needs to be firmly in place when that opportunity is available to peers without disabilities.
- Data from AOE demonstrates disparities in publicly-funded independent school enrollment between low-income students and students with disabilities and their higher income, non-disabled peers. This data deserves further analyses and consistent updating.

2. Variations in Approved Independent Schools:

- Approved independent schools provide general education to publicly funded students through tuition. Special education students so funded are entitled to a free, appropriate public education (FAPE) in these schools as federal and state law details.
- Approved independent schools serving students with disabilities only are schools that fall within the continuum of placements required by state and federal law in addressing the needs of some students with specialized and complex disabilities. These include a limited number of residential schools when round-the-clock services are necessary for a student to receive FAPE.
- Approved independent schools that serve only students who are privately funded where students with disabilities lose entitlement to FAPE but remain eligible, by federal law, for very limited funding under an Individual Services Plan (ISP). Services delivered to these students are determined and provided by the district where the independent school is located after consultation and input from all of the independent schools in the district.

3. Access:

- Public schools are required by IDEA and state special education regulations to serve all students. And all students who have been identified and found eligible for special education must be provided a free, appropriate public education (FAPE), meaning that the services must be appropriate to meet the student’s needs and at no cost to the parent.
- The services must take place in the least restrictive environment (LRE) meaning that “A student eligible for special education services shall be educated with his or her non-disabled chronological age peers to maximum extent appropriate in the school he or she would attend if he or she did not have a disability...” However, students with disabilities whose enrollment are publicly funded do not have access to the same independent schools that their non-disabled peers have access to. Independent schools in Vermont are not required to accept these students, and independent schools must be specifically approved to serve each particular category of disability.
- Public and independent schools share the difficulty in locating appropriately licensed and skilled special educators.

4. Enrollment, Retention and Discipline:

- Applications/admittance processes vary among independent schools; these are not required to be blind to disability status.
- Retention of students admitted to independent schools is a concern as students can be refused admission and counseled out.
- VCSEA recommends an open enrollment process such as is in place for career and technology centers which requires the school to administer a lottery if there are more students applying than can be admitted.

- Reporting to the sending district or to the AOE regarding disciplinary action in independent schools is not consistent, and due process regulations established within Vermont statutes for students who are suspended or expelled is not required. Publicly funded students should have access to the same protections as those in public schools and reporting to the sending school and AOE should be required.
- A commitment to data collection in this area is necessary as is data collection regarding discipline practices, suspensions and expulsions, and restrictive behavioral interventions. Without reliable data we are not in a position to know what is actually happening and where progress is being made.

5. Special Education Supervision and Communication with the LEA:

- Clarification of the expectations of the Local Education Agency Representative from the responsible school district and of the special education case manager and administration within the independent school is needed. The LEA representative assures for appropriate services, confirming allowable costs and assuring for compliance with special education law.
- The Case Manager in the independent school should be held responsible for ensuring services are being delivered as written in the IEP, and that the classroom teacher is appropriately supported, trained and held accountable for their responsibilities with regard to IEP goals, accommodations and progress data. Administrative commitment to the implementation of these regulations is foundational to inclusive practices.
- Reimbursement of costs for special education services in independent schools should align with requirements made of public schools allowing for fiscal accountability. This means invoices need to be detailed, consistent with the IEP, at reasonable cost in relationship to the service and submitted in a timely manner.

A Special Education Plan, drafted by the AOE, was provided to VCSEA and to a representative of independents schools during the timeframe when the Independent Schools Study Committee was meeting. Independently, the VCSEA Board chose to review the proposal, make recommended amendments and share this with the Independent Schools Study Committee. The VCSEA amended plan is included in the Independent Schools Study Committee Report.

The AOE plan as amended by VCSEA's Board of Directors addresses some of the VCSEA concerns identified above; :

- Approval of independent schools to receive public education funds requires demonstrated ability to serve students with disabilities in a manner consistent with Vermont and Federal law. This includes documentation of student progress, procedural safeguards, discipline procedures specified in state and federal law, licensed staff, and consistent communication with LEA over questions of implementation.
- Funding of independent schools would require open enrollment in all categories of disability.
- Placement and location of services: To be determined by the IEP Team in accordance with Special Education regulations including FAPE and LRE requirements.
- Special Education billing would require assurance of requisite staff and capability to provide special education and related services consistent with the students IEP. The billing process would need be consistent with the AOE Technical Manual for special education excess costs. Coordination with the LEA is necessary.
- State approved independent schools serving exclusively students with disabilities should be subject to some differences in requirements from those applying to general admission independent schools. Differences would include approval for the specific disability categories served, and therefore, not being required to serve all categories of disability. In addition, tuition rate setting processes established by AOE would apply. In some cases, this might include a residential placement.

Itemized Comments on S.229:

- p. 2 Section 1(3)(c) This paragraph represents a significant step forward in serving students with special education eligible disabilities within Vermont's general education independent schools. The collaborative nature of the decision making between parents, LEA and Independent School is affirmed. This collaborative decision-making process already occurs with independent schools who serve exclusively special education students exclusively.
- p. 2-3 Section 2(b) This paragraph affirms the decision-making role of the LEA since the LEA is the legally accountable entity for insuring that students with disabilities needs are met if the placement is by the IEP Team.
- p. 3 Section 2(5), line 20: There is concern that the student and/or parent might be viewed as responsible if suspension or "revocation" of the independent school's enrollment of the student. The LEA is responsible to locate an appropriate program and placement for the student, and in some regions of the state this is a challenge when there is no other independent school or public school outside the district (which doesn't have a public school) who will enroll the child. The student should be held harmless unless he/she has been offered an appropriate alternative and then does not attend. The importance of collaboration between the independent school, parent and LEA is critical under these circumstances, as is the implementation of special education regulations providing student protections within discipline practice.

- p. 6, Sec. 3(a), line 12 -19: It would be helpful to clarify that this enrollment is through the IEP process, and therefore, there is agreement between parent, LEA and independent school concerning the student's program goals, services and enrollment. In addition, minimum standards of services are well established in Federal and State special education law and regulation. These need to apply to independent schools with special education eligible students as well. It is not clear why under (b)(1) additional "minimum standards of services" would need to be developed given their current existence in the IEP process unless it refers to overall systems supports in the independent schools that are supportive of students with disabilities.
- p. 7, Sec. 3(2)(A) Maximum rates paid by the Agency and LEA for tuition, room and board applies only to special education students requiring a residential type of placement. Such residential placements require another set of AOE processes to be implemented by the LEA. Most students attending independent school in Vermont are day placements comparable to public school settings, and therefore, the concept of tuition, room and board does not apply. It should be (2)(B), lines 12 -19 that applies to day students in general education schools. Clarification of the language and to whom each of (2)(A) AND (2)(B) apply is important. There has been much historic confusion within AOE, Independent Schools and LEAs about the distinctions. The inclusion of excess cost language and implementing practices consistent with the AOE Technical Manual is clear and of value to all parties in understanding the difference between tuition rates and excess cost reimbursement.
- p. 7, Sec. 3(2)(C) What is being assured for with the language that the "...total amount of payments made by or on behalf of the State or a LEA to an approved independent school for providing services to a student placed with the school by the LEA...shall not be less than the total amount that would have been paid to a public school had the student been placed in the public school." How would these comparative totals be estimated?
- p. 8 – 9, Section 3(c)(1)(A)(i) - (iv), lines 13 – 18 and then p.9 lines 1-4 are important to include in establishing the applicability of FAPE, LRE, specific disability knowledge, student educational needs, procedural safeguards, parental rights and discipline procedures and protections.
- p. 9, (C), line 9-10: Addressing licensure is critical and an area where public and independent schools can and must work together to assure for timely access to appropriately trained and licensed personnel.
- p. 9, (D)(i-v), lines 11- 19: We support the inclusion of this section addressing communication. State and federal law requires communication about all aspects of delivery of special education services as identified in (i-iv) with parent, key parties in the school the student attends and the LEA regarding any anticipated changes; such communication is not discretionary.
- p. 9, Line 19 (E) Participation in dispute resolution is part of federal and state law; it cannot be considered discretionary.
- p.10, lines 8-21: (C)(d)(1) and (2): The IEP has already established what services and supports are necessary. A review to see which services are unavailable in the independent school makes sense. The LEA should be able to take on a supportive staffing role, if possible, but this role should be for a limited time within a single school year. The public-school system's primary responsibility is to maintain a robust and accountable public-school system.

Thank you for the opportunity to share VCSEA's perspective on this important work.

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