



219 North Main Street | Suite 402 | Barre, VT 05641  
(p) 802-479-1030 | (f) 802-479-1835 | [education.vermont.gov](http://education.vermont.gov)

**TESTIMONY PROVIDED TO:** Senate Education Committee  
**FROM:** Dr. Amy Fowler, Deputy Agency of Education  
Ms. Kate Rogers, Early Education Program Manager  
**TOPIC:** [PreK Revision Bill](#)  
**DATE:** February 13, 2018

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### **Overview**

The Secretaries of Education and Human Services were charged with making recommendations to the Legislature that will “ensure equity, quality, and affordability, and reduce duplication and complexity in the current delivery of PreKindergarten services.” Sec. 37 of Act 49 of 2017.

The Secretaries agreed that the ten hours of PreKindergarten (PreK) are intended to serve an educational purpose distinct from general child care and, therefore, should continue to be paid for out of the Education Fund, but that the current system of joint administration of PreK is inefficient. Because the source of PreK voucher payments is the Education Fund and the Secretary of Education is the fiscal agent of the Education Fund, the Secretaries recommend that the AOE should be the lead agency to make decisions and administer the PreK program and seek efficiency in the voucher system through a centralized payment and accounting system.

Under current law, school districts are required to manage contracts with an unlimited number of private providers, to include the cost of the voucher program for resident children in the district budget and to make payments to multiple private providers. Private providers are required to enter into contracts with multiple school districts who may use different invoicing systems. Under this proposal, the AOE will implement a single reimbursement procedure for all providers – both public and private – that will streamline the administrative burden at all levels.

The Secretaries also recommend eliminating dual regulation of PreK programs (so that the AOE begins sole regulation of public programs and CDD continues to regulate private providers), clarifying the value of the voucher for public and private providers, and clarifying the quality criteria for participation.

Finally, the Secretaries recommend that Legislation provide time to implement these changes – specifically to hire staff, develop a uniform payment system, and train participating programs in their use. If the Legislature passed these recommendations early in the session, the AOE would be prepared to enroll pre-qualified providers by May 2019.

## Section-by-Section Summary

Throughout: All references to joint administration have been struck as the AOE is the entity tasked with implementing PreK.

Sec. 1. Amends 16 V.S.A § 829 as follows:

### **Definitions**

- I. **Define Child Eligibility** (a)(1) Page 1- Clarifies that the PreK voucher is available to 5 year olds only if the child is not age-eligible for kindergarten.

**Rationale:** This conforms to the definition of “PreKindergarten education” in 16 V.S.A § 11(a)(31) and reflects legislative intent to create a voucher system for PreK-age children, not an extra year of funding for kindergarten-eligible children. If the intent was to pay for 3 years of PreK, that should be clarified instead since it has a budgetary impact. Children who receive early childhood special education services may access a third year of PreK funding based on LEA/IEP team placement decision.

**Senate Committee Question:** *What data do we have to suggest the impact of this determination? It is difficult to assess the actual impact versus the possible impact. Any date selected will be arbitrary- just as getting a driver’s license at 16, alcohol at 21 or voting at 18- these are dates that are set to best reflect what is typical for a person of a particular age. Any date you choose will be arbitrary. The difference with the driver’s license and alcohol is that there is rolling determinations- when you reach this age, you can do this thing. But with determinations like voting and school enrollment, you need to be a particular age by a particular time or you need to wait until the next event to participate. Statute requires that all schools operate K classrooms, while parents are free to choose not to send their children until they are age 6. Before that attendance is at their discretion. Every seat that is held for a K-eligible child that instead receives a PreK voucher amounts to the collective taxpayer community incurring costs for that child twice. Theoretically, if the legislature determines that all parents of all students eligible for K may have a 3<sup>rd</sup> year of PreK, you need to be prepared to fund that for all students no matter how far from the cut-off date. That is approximately 6,000 students per grade level; having said this we wouldn’t anticipate more than 20-30 in a given year. I have asked our data team to identify how many “eligible for K students” are currently registered for PreK and will send that as soon as it is available.*

- II. **Define Private Provider** (a)(3) Page 2- Changes term “prequalified private provider” to “private provider”. The adjective is redundant since the process of prequalification will end.

**House Committee Question:** *Is a private provider that is using public building space private or public? It is a private provider- it has a business whereby it is leasing space. It is the responsibility of the proprietor to maintain its license with CDD and to manage its business decisions. The private provider is responsible for the safety of its children.*

*House Committee Question: Should we specify that private providers meet the safety requirements of the AOE? No. CDD has extensive regulations to ensure child safety as part of what it does to become licensed. This is described in detail in Title 33.*

- III. **Define Public Provider** (a)(4) Page 2 - Adds a definition of public provider, meaning a program in a public school subject to the jurisdiction of a local school board.

*House Committee Question: Please correct typo of kindergarten and replace with PreKindergarten. The AOE agrees with this request.*

### **Accessing Publically Funded PreK**

- IV. **AOE to Pay Vouchers** (b)(2) and (3) Pages 2 and 3 - Provides that the Secretary, not the District, pays PreK vouchers to private providers. Adds that the Secretary also pays PreK vouchers to public providers.

*Rationale:* This describes that parents will need to enroll their child through the state in order to access the publically funded PreK voucher. The AOE will then create a grant for all eligible private and public providers that meet the criteria requirements described and process requests for reimbursement from both private and public providers. The process of establishing which programs are eligible for the pass-through grants is parallel to the current process of prequalification and requires no additional staffing.

- V. **Eliminate the requirement for Regional Plans** (b)(4) Page 3 - Eliminates requirement to develop regional plans for more PreK programs (there is no shortage).

### **Provider Qualifications**

- VI. **Clarify Qualifications for Participation** (c) Page 4 - Eliminates joint rulemaking requirements and sets out statutory requirements for program quality to access publically funded PreK vouchers
- a. Prequalification as a process is eliminated.
  - b. Private providers must still have national accreditation and meet CDD's STARS criteria. Private providers must have a licensed teacher on site.
  - c. Public provider meets program quality by providing direct instruction by a licensed teacher, following SBE rules on quality and safety and being under the jurisdiction of a local school board.
  - d. Additionally, there has been a request for greater transparency so that all parties can see the voucher has the same value in both public and private providers.

*Rationale:* - Providers that meet the requirements will be awarded eligibility for pass-through grants instead of prequalification status. This is essentially the same workload as currently exists at the AOE for prequalification but will also eliminate the need for additional contracts for private and public providers. Essentially maintains the criteria

for private and public providers established under Act 166 but accounts for the fact that public programs would now be regulated by the AOE and their local districts rather than CDD.

**Senate Committee Question:** *Why must there be a licensed educator on site? How will this affect providers? This is a relatively small change from current statute but a large change for some programs. The rationale for the change is that all research suggests that PreK outcomes improve as the qualifications of the educators improve, this is a key characteristic in ensuring that the investment the state is making will show returns for children.*

- *Public providers are currently required to have a licensed educator in the classroom with students during the time of instruction- this remains the expectation.*
- *Private center-based providers are currently required to have a licensed educator on site during the time PreK services are delivered- this remains the expectation.*
- *Private home-based providers are currently required to have a licensed educator consult with them for “regular, active supervision and training” which has been adopted in Rule as being at least 3 hours per week. For these programs, it is a significant change. Of the roughly 400 PreK providers (public and private), 41 are home-based providers, 14 are led by licensed teachers but 27 are not. For the 27 programs that are affected this would be an unwelcome change.*

## Voucher/Tuition Related Items

- VII. **Overview of Eligibility for Payment** (d)(1) Page 6 – Provides that the Secretary directly pays vouchers out of the Ed Fund for the 10 hours; that payment requires a participation notice from the parents or guardian, an enrollment notice from the provider, and a request for reimbursement on which the provider certifies it is eligible for public funding under (c).

**Rationale:** One of the most difficult aspects of Act 166 for private providers and public school systems has been the multitude of contractual obligations. Each SU/SD has its own contracts with different terms, billing procedures and oversight. This has led private providers to be frustrated with varied expectations when they have up to 15 SU/SDs to partner with. Likewise, SU/SDs have complained regarding the 1-50 contracts they have had to manage with providers.

Secondly, there has been a request for greater transparency so that the voucher has the same value in public and private providers.

- VIII. **Removes Unnecessary Budget Item** Deletes (d)(2) Page 7 - requires local school systems to track PreK expenditures. This is redundant to the school budget process and the chart of accounts work underway.
- IX. **Providing more than 10 hours of PreK** (d)(4) Page 7
- a. Provides that a district that provides *in excess of 10 hours* of PreK to a resident child may count the child in its average daily membership but may not charge tuition to parents or the state for the excess hours.
  - b. Provides that a private provider or a public provider that has non-resident PreK students may charge the parents tuition for PreK education *in excess of 10 hours*.
- Rationale:* Several school systems have opted to use federal or local funds to provide additional PreK hours either through a public or private provider. This allows that practice to continue.
- X. **Affirms that Parents Receive 10 Hours of Free PreK** (d)(4) Page 7 – Provides that parents will receive 10 hours per week of free PreK, regardless of the PreK being provided in the district of residence, another public district, or a private provider. Treats a public provider that is not the child’s district of residence the same as a private provider in that they may receive payment directly from the parent or guardian if they provide PreK hours in excess of 10. Adds that neither may impose additional fees for the publicly funded hours.

**Rulemaking**

- XI. **Rulemaking Requirements** (e) Page 8 – Eliminates joint rulemaking; eliminates or modifies some subjects of rulemaking that are inconsistent with AOE payment of vouchers; requires AOE to propose rules to the SBE to establish a process by which tuition payments are requested and related to quality and safety in public PreK programs.

*Rationale:* Current Rules will need to be revised and replaced. This provides for community input into the finer grained details of implementation regarding administrative efforts to implement this bill. In addition, because of the significant changes in law, we estimate needing at least 6-8 months to initiate and finalize Rules.

**Geographic Regions**

- XII. Eliminates ability of districts to establish geographic regions

Sec. 2.

**Financial Accounting**

- XIII. **ADM Definition** Page 15 - Amends the definition of “average daily membership” in 16 V.S.A § 4001 to include a district’s PreK students attending *in excess of 10 hours* of PreK on a prorated basis up to an additional 10 hours. Thus, a PreK student attending 10 or fewer hours is not

counted in ADM (or counted as zero); a student attending 20 or more hours of PreK is counted as 1; and a student attending 15 hours is counted as 0.5. This is comparable to how kindergarten students are counted for ADM purposes where 10 hours per week is one ADM.

**Rationale:** This is necessary to allow public school districts to offer more than 10 hours of PreK if their community supports that effort.

**House Committee Question:** *How does prorated ADM count work? A district can only count a student in their ADM if they provide more than 10 hours of PreK per week. The first 10 hours will be funded off the top of the Ed fund and will not be part of the ADM count. Each additional hour of PreK offer will count as 0.1 hour of ADM up to 10 additional hours. At 20 total hours the student will count as 1 ADM. Any PreK provided in excess of 20 hours per student does not count as additional ADM.*

**Senate Committee Question:** *Will this create “phantom students”? Why will schools be able to count PreK students that attend private providers? They won’t. The additional ADM is only available to public programs offering more than 10 hours of PreK to the students it serves on site. Imagine a district has 20 PreK eligible students and its voters determine to offer 20 total hours of PreK in the public program. If only 7 attend the public program, the school system will get the standard voucher for 7 students for the first 10 hours and then a full ADM for the remaining 10 hours multiplied by the .46 weight. The public school system will receive no ADM for the 13 students whose families determined that a private provider was a preferred placement.*

#### **Ending Dual Regulation Page 16**

- XIV. Sec. 3. Amends 33 V.S.A § 3502 to exempt public providers from CDD regulation unless they ask to participate in the child care subsidy program. CDD will continue to regulate private providers but will not have regulatory authority over public providers that are subject to their own school board’s jurisdiction and AOE oversight.

**Rationale:** Introduces that public providers will be exempt from CDD regulation.

#### **Timeline Page 17**

- XV. Sec. 4. Provides that these amendments shall take effect on June 1, 2019.

**Rationale:** In order to execute the data collection mechanisms, to create Rules and to provide appropriate time for budgeting, the AOE requests that this law not go into effect until June 1, 2019.