

1 Introduced by Committee on Education

2 Date:

3 Subject: Education; human services; early childhood education;
4 prekindergarten

5 Statement of purpose of bill as introduced: This bill proposes to (i) eliminate
6 joint **regulatory oversight** by the Agency of Education and the Agency of
7 Human Services of prekindergarten education programs; (ii) require that
8 school districts that pay tuition for prekindergarten education use uniform
9 forms and processes developed by the Agency of Education **unless compliance**
10 **with these uniform forms and processes would be unduly burdensome or costly**
11 **to the school district**; and (iii) simplify and clarify the quality criteria for
12 prekindergarten providers.

13 An act relating to prekindergarten education

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 16 V.S.A. § 829 is amended to read:

16 § 829. PREKINDERGARTEN EDUCATION

17 (a) Definitions. As used in this section:

18 (1) “Prekindergarten child” means a child who, as of the date
19 established by the district of residence for kindergarten eligibility, is;

1 (A) three or four years of age or is five years of age but is not yet
2 eligible to be enrolled in kindergarten; or

3 (B) five years of age but is not yet enrolled in kindergarten if the
4 child is on an individualized education program or a plan under Section 504 of
5 the Rehabilitation Act of 1973 and the child’s individualized education
6 program team or evaluation and planning team recommends that the child
7 receive prekindergarten education services.

8 (2) “Prekindergarten education” means services designed to provide to
9 prekindergarten children developmentally appropriate early development and
10 learning experiences based on Vermont’s early learning standards.

11 (3) “~~Prequalified private~~ Private provider” means a private provider of
12 prekindergarten education that ~~is qualified pursuant to subsection~~ meets the
13 program quality requirements under subdivision (c)(1)(A) of this section and is
14 regulated as a center-based child care program or family child care home by
15 the Child Development Division of the Department for Children and Families.

16 (4) “Public provider” means a provider of prekindergarten education
17 that is a school district that meets the program quality requirements under
18 subdivision (c)(1)(B) of this section.

19 (b) Access to publicly funded prekindergarten education.

20 (1) ~~No~~ Not fewer than ten hours per week of publicly funded
21 prekindergarten education shall be available for 35 weeks annually to each

1 prekindergarten child whom a parent or guardian wishes to enroll in an
2 available, ~~prequalified~~ prekindergarten education program operated by a public
3 ~~school~~ provider or a private provider.

4 (2) If a parent or guardian chooses to enroll a prekindergarten child in an
5 available, ~~prequalified~~ prekindergarten education program, then, pursuant to
6 the parent or guardian’s choice, the school district of residence shall:

7 (A) pay tuition pursuant to subsections (d) and (h) of this section
8 upon the request of the parent or guardian to:

9 (i) a ~~prequalified~~ private provider; or

10 (ii) a public ~~school~~ provider ~~located outside the district that~~
11 ~~operates a prekindergarten program that has been prequalified pursuant to~~
12 ~~subsection (e) of this section~~ that is not the school district of residence; or

13 (B) enroll the child in the prekindergarten education program that it
14 operates.

15 (3) If requested by the parent or guardian of a prekindergarten child, the
16 school district of residence shall pay tuition to a ~~prequalified~~ prekindergarten
17 education program operated by a private provider or a public ~~school in another~~
18 ~~district~~ provider that is not the school district of residence even if the district of
19 residence operates a prekindergarten education program.

20 (4) If the supply of ~~prequalified private and public providers is~~
21 ~~insufficient to meet the demand for publicly funded prekindergarten education~~

1 ~~in any region of the State, nothing~~ Nothing in this section shall be construed to
2 require the State or a district to begin or expand a prekindergarten education
3 program to satisfy that demand; but rather, in collaboration with the Agencies
4 of Education and of Human Services, the local Building Bright Futures
5 Council shall meet with school districts and private providers in the region to
6 develop a regional plan to expand capacity for prekindergarten education. If a
7 district plans to begin or expand a public prekindergarten education program, it
8 shall, not less than 30 days prior to the date of commencement or expansion of
9 the program, notify in writing the public and private providers with which it
10 has contracted to provide prekindergarten education.

11 (c) ~~Prequalification. Pursuant to rules jointly developed and overseen by~~
12 ~~the Secretaries of Education and of Human Services and adopted by the State~~
13 ~~Board pursuant to 3 V.S.A. chapter 25, the Agencies jointly may determine~~
14 ~~that a private or public provider of prekindergarten education is qualified for~~
15 ~~purposes of this section and include the provider in a publicly accessible~~
16 ~~database of prequalified providers. At a minimum, the rules shall define the~~
17 ~~process by which a provider applies for and maintains prequalification status,~~
18 ~~shall identify the minimum quality standards for prequalification, and shall~~
19 ~~include the following requirements~~ Provider qualification.

20 (1) In order to be eligible for tuition payments:

1 ~~(A)~~(A) A program of prekindergarten education, whether provided by a
2 school district or a private provider, shall have received private provider shall
3 meet minimum program quality by:

4 ~~(A)~~(i) having National Association for the Education of Young
5 Children (NAEYC) accreditation; or

6 ~~(B)~~ at least four stars in the Department for Children and Families’
7 STARS system ~~with a plan to get to at least two points in each of the five~~
8 ~~arenas; or and~~

9 ~~(C)~~ three stars in the STARS system if the provider has developed a
10 plan, approved by the Commissioner for Children and Families and the
11 Secretary of Education, to achieve four or more stars with at least two points in
12 each of the five arenas in no more than three years, and the provider has met
13 intermediate milestones.

14 ~~(B)~~(ii) employing or contracting for the services of at least one
15 teacher to provide direct instruction to prekindergarten students who is either
16 licensed and endorsed in early childhood education under chapter 51 of this
17 title, licensed and endorsed in early childhood special education under chapter
18 51 of this title, or has a Montessori early childhood teacher certification:

19 (I) for a private provider that is regulated as a center-based
20 child care program, during the hours in which prekindergarten education is
21 paid for with publicly funded tuition; or

1 (II) for a private provider that is regulated as a family child care
2 home, for at least three hours per week in which prekindergarten education is
3 paid for with publicly funded tuition.

4 (2)(B) A licensed public provider shall employ or contract meet
5 minimum program quality by:

6 (A)(i) employing or contracting for the services of at least one
7 teacher who is licensed and endorsed in early childhood education or in early
8 childhood special education under chapter 51 of this title to provide direct
9 instruction to prekindergarten students during the hours of operation of the
10 program; and

11 (B)(ii) meeting safety and quality rules adopted by the State Board of
12 Education.

13 (2)(A) The Agency of Human Services shall maintain and post on its
14 website a list of private providers that satisfy the program quality requirements
15 under subdivision (1)(A) of this subsection. A private provider that no longer
16 satisfies one or more of these requirements shall notify in writing the Agency
17 of Human Services and the public providers with which it has contracted to
18 provide prekindergarten education within five calendar days after the event
19 causing noncompliance with these requirements.

20 (B) The Agency of Education shall maintain and post on its website a
21 list of public providers that satisfy the program quality requirements under

1 subdivision (1)(B) of this subsection. A public provider that no longer satisfies
2 one or more of these requirements shall notify in writing the Agency of
3 Education and the public providers with which it has contracted to provide
4 prekindergarten education within five calendar days after the event causing
5 noncompliance with these requirements.

6 ~~(3) A registered home provider that is not licensed and endorsed in early~~
7 ~~childhood education or early childhood special education shall receive regular,~~
8 ~~active supervision and training from a teacher who is licensed and endorsed in~~
9 ~~early childhood education or in early childhood special education under~~
10 ~~chapter 51 of this title.~~

11 (d) Tuition, budgets, and average daily membership.

12 (1) On behalf of a resident prekindergarten child, a district shall pay
13 tuition for prekindergarten education for ten hours per week for 35 weeks
14 annually to a ~~prequalified~~ private provider or to a public school outside the
15 district that is ~~prequalified pursuant to subsection (e) of this section~~ provider
16 that is not the child's district of residence; provided, however, that the district
17 shall pay tuition for weeks that are within the district's academic year. Tuition
18 paid under this section shall be at a statewide rate, which may be adjusted
19 regionally, that is established annually through a process ~~jointly~~ developed and
20 implemented by the ~~Agencies~~ Agency of Education and of Human Services. A
21 district shall pay tuition upon:

1 (A) receiving notice from the child’s parent or guardian that the child
2 is or will be admitted to the prekindergarten education program operated by the
3 ~~prequalified~~ private provider or the other district; and

4 (B) concurrent enrollment of the prekindergarten child in the district
5 of residence for purposes of budgeting and determining average daily
6 membership.

7 (2) In addition to any direct costs of operating a prekindergarten
8 education program, a district of residence shall include anticipated tuition
9 payments and any administrative, quality assurance, quality improvement,
10 transition planning, or other prekindergarten-related costs in its annual budget
11 presented to the voters.

12 (3) Pursuant to subdivision 4001(1)(C) of this title, the district of
13 residence may include within its average daily membership any
14 prekindergarten child for whom it has provided prekindergarten education or
15 on whose behalf it has paid tuition pursuant to this section.

16 (4) A ~~prequalified~~ private provider, or a public provider that is not the
17 child’s district of residence, may receive additional payment directly from the
18 parent or guardian only for prekindergarten education in excess of the publicly
19 funded hours paid for by the district pursuant to this ~~section~~ subsection or for
20 child care services, or both. The provider is not bound by the statewide rate
21 established in this subsection when determining the rates it will charge the

1 parent or guardian for these excess hours. A private or public provider shall
2 not impose additional fees for the hours that are publicly funded under this
3 section.

4 (5)(A) Subject to subdivision (B) of this subdivision (d)(5), a school
5 district that pays tuition for prekindergarten education under this section shall
6 use uniform forms and processes developed by the Agency of Education for:

7 (i) contracting with the private or public provider;

8 (ii) invoicing, payment schedules, and payment of tuition for the
9 hours that are publicly funded under this section;

10 (iii) enrolling students in the prekindergarten program; and

11 (iv) tracking attendance of enrolled students.

12 (B) Notwithstanding subdivision (A) of this subdivision (d)(5), a
13 school district may adapt the uniform forms and processes developed by the
14 Agency of Education to its circumstances if compliance with these uniform
15 forms and processes would be unduly burdensome or costly to the school
16 district.

17 (6) The board of a supervisory union that has a member district that is a
18 public provider shall adopt a monitoring policy covering the public provider's
19 prekindergarten education program that complies with State Board rules.

20 (7) A school district that pays tuition for prekindergarten education
21 under this section shall be responsible for ensuring that the provider is on the

1 list maintained by the Agency of Human Services or the Agency of Education
2 under subdivision (c)(2) of this section, but shall have no responsibility to
3 monitor the administration of prekindergarten educational services provided by
4 the public or private provider and shall be immune from civil and criminal
5 liability and penalties for the acts or omissions of the public or private
6 provider’s administration of prekindergarten educational services.

7 (e) Rules Regulatory oversight and rules.

8 (1)(A) The Agency of Education shall have sole regulatory oversight of
9 a prekindergarten educational program offered by a public provider, provided
10 that if the public provider participates in the Child Care Financial Assistance
11 Program pursuant to 33 V.S.A. § 3512, the Agency of Human Services shall
12 have regulatory oversight of the provider’s compliance with Program
13 requirements.

14 (B) The Department for Children and Families’ Child Development
15 Division shall have sole regulatory oversight of a prekindergarten educational
16 program offered by a private provider.

17 (2) The In order to ensure the consistent application of rules to public
18 and private providers, the Secretary of Education and the Commissioner for
19 Children and Families shall jointly develop and agree to rules and present them
20 to the State Board for adoption under 3 V.S.A. chapter 25 as follows:

1 ~~(1)(A)~~ To permit private providers that are not prequalified pursuant to
2 subsection (e) would otherwise be qualified as private providers but for
3 noncompliance with subdivision (c)(1)(A)(ii) of this section, to create new or
4 continue existing partnerships with school districts through which the school
5 district provides teacher supports that enable the provider to fulfill the
6 requirements of that subdivision (e), and through which the district may or may
7 not make in-kind payments as a component of the statewide tuition established
8 under this section.

9 ~~(2)~~ To authorize a district to begin or expand a school-based
10 prekindergarten education program only upon prior approval obtained through
11 a process jointly overseen by the Secretaries of Education and of Human
12 Services, which shall be based upon analysis of the number of prekindergarten
13 children residing in the district and the availability of enrollment opportunities
14 with prequalified private providers in the region. Where the data are not clear
15 or there are other complex considerations, the Secretaries may choose to
16 conduct a community needs assessment.

17 ~~(3)(B)~~ To require that the school district provides public and private
18 providers provide opportunities for effective parental participation in the
19 prekindergarten education program.

20 ~~(4)(C)~~ To establish a process by which:

1 ~~(A)~~(i) a parent or guardian notifies the district that the
2 prekindergarten child is or will be admitted to a prekindergarten education
3 program not operated by the district and concurrently enrolls the child in the
4 district pursuant to subdivision (d)(1) of this section;

5 ~~(B)~~(ii) a district:

6 ~~(i)~~(I) pays tuition pursuant to a schedule that does not inhibit the
7 ability of a parent or guardian to enroll a prekindergarten child in a
8 prekindergarten education program or the ability of a ~~prequalified~~ private
9 provider to maintain financial stability; and

10 ~~(ii)~~(II) enters into an agreement with any provider to which it will
11 pay tuition ~~regarding quality assurance, transition, and any other matters~~; and

12 ~~(C)~~(iii) a provider that has received tuition payments under this
13 section on behalf of a prekindergarten child notifies a district that the child is
14 no longer enrolled.

15 ~~(5)~~(D) To establish a process to calculate an annual statewide tuition
16 rate that is based upon the actual cost of delivering ten hours per week of
17 prekindergarten education that meets all established quality standards and to
18 allow for regional adjustments to the rate.

19 ~~(6)~~ [Repealed.]

1 ~~(7)~~(E) To require a district to include identifiable costs for
2 prekindergarten programs and essential early education services in its annual
3 budgets and reports to the community.

4 ~~(8)~~(F) To require a district to report to the Agency of Education annual
5 expenditures made in support of prekindergarten education, with distinct
6 figures provided for expenditures made from the General Fund, from the
7 Education Fund, and from all other sources, which shall be specified.

8 ~~(9)~~(G) To provide an administrative process for:

9 ~~(A)~~(i) a parent, guardian, or provider to challenge an action of a
10 school district or the State when the complainant believes that the district or
11 State is in violation of State statute or rules regarding prekindergarten
12 education; and

13 ~~(B)~~(ii) a school district to challenge an action of a provider or the
14 State when the district believes that the provider or the State is in violation of
15 State statute or rules regarding prekindergarten education.

16 ~~(10)~~(H) To establish a system comparable systems by which the Agency
17 of Education and Department for Children and Families shall jointly monitor
18 and evaluate the implementation of publicly funded prekindergarten education
19 programs under their respective jurisdictions to promote optimal results for
20 children that support the relevant population-level outcomes set forth in
21 3 V.S.A. § 2311 and to collect data that will inform future decisions. Pursuant

1 to subdivision (d)(6) of this section, the required monitoring system adopted by
2 the Agency of Education shall include a requirement that a prekindergarten
3 monitoring policy be implemented by the board of those supervisory unions
4 that have a member district that is a public provider. The Agency and
5 Department shall be required to **jointly** report the results of their monitoring
6 and evaluation annually to the General Assembly in January for the prior
7 school year. At a minimum, the system shall monitor and evaluate:

8 **(A)(i)** programmatic details, including the number of children served,
9 the number of private and public programs operated, and the public financial
10 investment made to ensure access to quality prekindergarten education;

11 **(B)(ii)** the quality of public and private prekindergarten education
12 programs and efforts to ensure continuous quality improvements through
13 mentoring, training, and technical assistance, ~~and otherwise~~; and

14 **(C)(iii)** the results for children, including school readiness, and
15 proficiency in numeracy and literacy, and social and emotional development.

16 **(11)(D)** To establish a process for documenting the progress of children
17 enrolled in prekindergarten education programs and to require public and
18 private providers to use the process to:

19 **(A)(i)** help individualize instruction and improve program practice;

20 and

1 ~~(B)~~(ii) collect and report child progress data to the Secretary of
2 Education and the Commissioner for Children and Families on an annual basis.

3 (J) To establish safety and quality requirements for public and private
4 providers.

5 (3) In proposing and adopting rules under this subsection (e), the
6 Agency or Education, the State Board of Education, and the Department for
7 Children and Families shall seek to ensure that the rules that apply to public
8 and private providers are aligned, except to the extent that there are compelling
9 reasons that are unique to the public or private provider environment that
10 justify applying different requirements.

11 (f) Other provisions of law. Section 836 of this title shall not apply to this
12 section.

13 (g) Limitations. Nothing in this section shall be construed to permit or
14 require payment of public funds to a private provider of prekindergarten
15 education in violation of Chapter I, Article 3 of the Vermont Constitution or in
16 violation of the Establishment Clause of the U.S. Constitution.

17 (h) Geographic limitations.

18 (1) Notwithstanding the requirement that a district pay tuition to any
19 ~~prequalified~~ public or private provider in the State, a school board may choose
20 to limit the geographic boundaries within which the district shall pay tuition by
21 paying tuition solely to those ~~prequalified~~ providers in which parents and

1 guardians choose to enroll resident prekindergarten children that are located
2 within the district’s “prekindergarten region” as determined in subdivision (2)
3 of this subsection.

4 (2) For purposes of this subsection, upon application from the school
5 board, a district’s prekindergarten region shall be determined jointly by the
6 Agencies of Education and of Human Services in consultation with the school
7 board, private providers of prekindergarten education, parents and guardians of
8 prekindergarten children, and other interested parties pursuant to a process
9 adopted by rule under subsection (e) of this section. A prekindergarten region:

10 (A) shall not be smaller than the geographic boundaries of the school
11 district;

12 (B) shall be based in part upon the estimated number of
13 prekindergarten children residing in the district and in surrounding districts, the
14 availability of ~~prequalified~~ private and public providers of prekindergarten
15 education, commuting patterns, and other region-specific criteria; and

16 (C) shall be designed to support existing partnerships between the
17 school district and private providers of prekindergarten education.

18 (3) If a school board chooses to pay tuition to providers solely within its
19 prekindergarten region, and if a resident prekindergarten child is unable to
20 access publicly funded prekindergarten education within that region, then the
21 child’s parent or guardian may request and in its discretion the district may pay

1 tuition at the statewide rate for a prekindergarten education program operated
2 by a ~~prequalified~~ provider located outside the prekindergarten region.

3 (4) Except for the narrow exception permitting a school board to limit
4 geographic boundaries under subdivision (1) of this subsection, all other
5 provisions of this section and related rules shall continue to apply.

6 Sec. 2. 33 V.S.A. § 3502 is amended to read:

7 § 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC
8 SCHOOLS; 21ST CENTURY FUND

9 (a) Unless exempted under subsection (b) of this section, a person shall not
10 operate a child care facility without a license, or operate a family child care
11 home without registration or a license from the Department.

12 (b) The following persons are exempted from the provisions of
13 subsection (a) of this section:

14 * * *

15 (5) an after-school program that serves students in one or more grades
16 from kindergarten through secondary school, that receives funding through the
17 21st Century Community Learning Centers program, and that is overseen by
18 the Agency of Education, unless the after-school program asks to participate in
19 the child care subsidy program; and

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Sec. 4. DEVELOPMENT OF UNIFORM FORMS AND PROCESSES

On or before October 31, 2020, the Secretary of Education shall develop and post on its website uniform forms and processes under 16 V.S.A. § 829 as amended by this act for:

(1) a school district to contract with a private or public prekindergarten education provider;

(2) invoicing, payment schedules, and payment of tuition for the hours that are publicly funded under that section;

(3) enrolling students in a prekindergarten education program; and

(4) tracking attendance of students enrolled in a prekindergarten education program.

Sec. 5. PREKINDERGARTEN MONITORING POLICY

On or before June 30, 2021, the Secretary of Education shall develop and post on its website a model prekindergarten monitoring policy for supervisory unions.

Sec. 6. HEALTH AND SAFETY RULES

The safety and quality requirements that are required under this act to be adopted for public providers of prekindergarten education shall be aligned to the rules that the Department for Children and Families applies to private providers of prekindergarten education, unless there are compelling reasons

1 that are unique to the public environment that justify applying different
2 requirements.

3 **Sec. 7. INTERIM REQUIREMENT FOR TEACHERS IN PRIVATE**
4 **PREKINDERGARTEN SETTINGS**

5 Notwithstanding the requirement under 16 V.S.A. § 829(c)(1)(A)(ii), as
6 amended by this act, that a private prekindergarten provider employ or contract
7 for the services of at least one qualified teacher to provide direct educational
8 instruction, a private prekindergarten provider may use the services of a
9 qualified teacher to provide either direct instruction to prekindergarten
10 students, or coaching to the provider’s staff, or both, until the start 2023–2024
11 school year. For the 2023–2034 school year and thereafter, a private
12 prekindergarten provider shall comply with the teacher requirements of 16
13 V.S.A. § 829(c)(1)(A)(ii), as amended by this act. [A private prekindergarten
14 provider that uses the services of a qualified teacher to provide instructional
15 coaching to the provider’s staff shall use for this purpose the guidelines for
16 implementing effective coaching systems issued by the Agency of Education
17 in March 2016.] [As used in this section, “coaching” means the practice of
18 endeavoring to close the student achievement gap and accelerate learning for
19 all students by building teacher capacity through implementation of effective
20 instructional practices, including the provision of ongoing, embedded, non-
21 evaluative, professional learning.]

1 **Sec. 8.** EFFECTIVE DATES

2 Secs. 1–3 shall take effect on July 1, 2021, and Secs. 4–7 and this section
3 shall take effect on passage.