

SPECIAL EDUCATION; ACT 173

JANUARY 11, 2019

What are we talking about?

- Reform of special education funding and delivery practices
- The equalized pupil weighting study
- New special education requirements for approved independent schools

Reform of special education funding and delivery practices

Statutory Framework

- Federal law provides federal funds for the education of students requiring special education (IDEA).
- To be eligible to receive federal funds, Vermont must provide additional funding (supplement and not supplant) and ensure that students requiring special education receive a free and appropriate public education in the least restrictive environment.
 - Special education maintenance of fiscal support requirement — Vermont (all states) are required to appropriate not less than prior fiscal year for special education services.

- To be eligible for special education services (three-part test):
 - a student must have a disability, that
 - has an adverse effect on education, and that
 - results in a need for special education services (State Board of Education Rule 2362).
- These students have an individualized education program (IEP), and special education services are provided in accordance with the IEP.
- Vermont's public schools are required to develop and maintain a comprehensive system of educational support designed to result in all students succeeding. 16 V.S.A. §§ 2901 and 2902

Current Special Education Funding Framework

- The current system is primarily a reimbursement system with the State paying approximately 60% and school districts paying 40%.
 - State reimburses supervisory unions 60% of special education expenses up to \$50,000 per child and 90% of special education expenses in excess of \$50,000 per child.
 - State appropriation for special education in FY2019 was \$189 million.
- Federal funds cover about 6% of Vermont's special education funding.
- Federal and State funding for special education is categorical—meaning that it must be spent on students with an IEP.

Special Education Study Reports

- In 2016, the General Assembly commissioned two special education reports.
- The DMG (District Management Group) Report made these recommendations on best practices for the delivery of special education services:
 - ensure core instruction meets most needs of most students;
 - provide additional instructional time outside core subjects to students who struggle; and
 - ensure students who struggle receive all instruction from highly skilled teachers.

- The UVM Report on funding for special education noted that Vermont's existing reimbursement model of funding special education has a number of limitations in that it:
 - is administratively costly for the State and localities;
 - creates misplaced incentives for student identification, categorization, and placement;
 - discourages cost containment; and
 - is unpredictable and lacks transparency.

- The UVM Report noted that the advantages of a census-based model (a model that would award funding to supervisory unions based on the number of students within the supervisory union) are that it:
 - is simple and transparent;
 - allows flexibility in how the funding is used by supervisory unions;
 - is aligned with the policy priorities of serving students who require additional support across the general and special education service-delivery systems; and
 - is predictable.

Reform of special education funding

- Census grant
 - Grant determined on census basis (amount paid per student)—full implementation in FY2025.
 - A supervisory union may receive an additional amount (census grant adjustment) if it has a relatively high percentage of students who require additional support.
 - Being studied
 - Supervisory unions are required to use this funding to provide special education services to students in accordance with their IEPs. **A supervisory union may also use census grant funds to support the delivery of services to other students who require additional support.**

- No local share (but must comply with federal requirements).
- Commits the State to satisfying its special education maintenance of fiscal support requirement under federal law.
 - To appropriate at least as much as prior year
 - Cost savings from level funding with no inflator
- Extraordinary special education reimbursement
 - If a supervisory union has special education expenditures that exceed \$60,000 for a student in a fiscal year, it will be eligible for extraordinary special education reimbursement, which is in essence equals:
 - 95% of expenditures above \$60,000; plus
 - 60% of expenditures up to \$60,000.

Reform of special education delivery of services

- Requires the Agency of Education to assist supervisory unions to expand and improve their delivery of services to students who require additional support in accordance with the DMG report.
- Provides \$200,000 in funding for each of fiscal years 2019, 2020, and 2021.
- Creates three positions in the Agency of Education to support special education.

Advisory Group Report

- Act 173 created an Advisory Group to assist with the implementation of the Act.

- The Advisory Group is charged with the responsibility to recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of the Act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools.
- The Advisory Group is required to report to House and Senate Committees on Education with its recommendations for legislation and the status of implementation on January 15 of 2019, 2020, 2021, and 2022.

The equalized pupil weighting study

- Repeals the requirement for the Agency of Education to perform a study of weighted long-term membership (how pupils are weighted for tax rate calculation purposes) under Sec. 35 of 2017 Acts and Resolves No. 49.
 - Study was not performed due to lack of funding and resources at AOE.
- Reinstates the same study requirement, which is due November 1, 2019, but:
 - With \$250,000 in funding; and
 - Adds requirement that the Agency of Education consider whether the census grant should be increased for supervisory unions that have relatively higher costs in supporting students who require additional

support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied.

New special education requirements for approved independent schools (effective July 1, 2022)

- Under federal law, approved independent schools are not required to enroll students with disabilities unless they are “otherwise qualified” to attend the school.
- In 2016, the State Board of Education initiated rulemaking that would have required approved independent schools to accept all students (open enrollment), including any student with a disability.
- In 2017, the General Assembly commissioned a study committee to recommend legislation and stopped rulemaking until it had time to further consider the issue.

- The Study Committee was unable to reach consensus on specific legislative language, but agreed that Vermont students on an IEP should be free to attend the schools that they, their parents, and their local education agency deem appropriate to them.
 - In Vermont, the local education agency (LEA) is the supervisory union that is responsible for the student.
- Act 173 requires an approved independent school that accepts public tuition to enroll any student with an IEP who is placed in the approved independent school by the student's LEA, except for an independent school that limits enrollment to students who are on an IEP.
- Act 173 requires that, on or before November 1, 2019, the Vermont Standards Board for Professional Educators review its special educator endorsement requirements and initiate rulemaking to update its rules to ensure that these requirements do not serve as a barrier to satisfying statewide demands for licensed special educators.

- Act 173 requires that, on or before November 1, 2020, the State Board of Education review its rules for approving independent schools in specific special education categories and initiate rulemaking to update its rules to simplify and expedite the approval process.