

Draft Request 20-077, Sections 1, 2 and 16

Testimony To: Senate Committee on Education
Respectfully Submitted by: Daniel M. French, Ed.D., Secretary of Education
Date: February 13, 2020

Policy Recommendation

In my previous testimony on the draft bill, I have stated there are two logical criteria that should be utilized in this evaluation:

- **Policy Coherence** – Vermont's education system needs better policy coherence to address our complex societal needs and to ensure all students have access to a high-quality education. I define policy coherence as there being a tighter connection between statute, regulation, and technical guidance.
- **Policy Accountability** – Like other departments and agencies in the Executive Branch, the General Assembly needs to be able to hold the Agency of Education accountable for the implementation of education policies and laws.

Recommendations for Improvement of the Committee's Draft Bill

In a revised framework of responsibility between the State Board and the Agency, the rules which are a function of state policy articulation should be adopted and implemented by the State Board; rules that are focused in operational, rather than policy, areas should be adopted and implemented by the Agency. Many of the current rules are purely technical or administrative and conform to the federal rules and guidance on the subject. In the cases where I recommend the State Board serve as the rulemaking authority, the nature of the topic being regulated requires public engagement and outreach and the exercise of political judgment. I agree with the State Board Chair's assertion that this is the ideal and proper role for the State Board.

In this framework, the State Board should also have implementation authority within each of the rule series that it retains, rather than writing rules for the Agency to carry out. For example, if the State Board adopts the rules for independent school approval, as suggested below, the Board should also have authority to grant or deny approval status, under the rules. This will allow the General Assembly to appropriately hold the Agency accountable and avoid the confusion and inefficiency inherent in the split responsibility that exists under current law.

State Board Rules:

- **Series 1200** – Organization of SBE, administrative procedures, appeals process.
 - This rule series, last updated in 2010, is in need of revision. The State Board discussed updating these rules in early 2019. The rules as currently written also govern the process for appeals to the Secretary.

- **Series 2200** – Independent School Approval.
 - This rule series will undergo substantial amendment as required by Act 173. The process will require stakeholder engagement and balancing of the interests of school districts that pay tuition and approved independent schools. The Agency is currently beginning the first draft of proposed revisions to 2200.
 - Independent school approval is not governed by federal law.
- **Series 3000** – Supervisory Union Organization.
 - These rules govern the process for an SU to request a change in membership as well as process for appointment of superintendents, which is with the advice of the Secretary. The rules also include definitions and procedures required by law, such as the receipt and accounting of district funds and model language for budget articles voted by Australian ballot.
 - The State Board’s authority to issue the Final Order and State Plan has expired, but there is an ongoing need for oversight of supervisory union configuration and governance. This is a policy area that is not governed by federal law and involves balancing interests. It is appropriate for the State Board’s continued involvement.
- **Series 3400** – Alternative Governance Structure Proposals.
 - This rule series was passed to govern the data requirements for Section 9 proposals during the Act 46 process. Unless amended, these rules will sunset on July 1, 2021.

The State Board should also review and comment on rules that are proposed by the Agency of Education, prior to review by the Interagency Committee on Administrative Rules (ICAR). The viewpoints of the State Board will continue to be valuable to the Agency as it considers the adoption of its own rules.

Agency of Education Rules:

The following rule series were proposed in the Committee’s draft as remaining with the State Board. However, for each of these rule series, there is either a predominance of federal regulation that leaves little policy room for the state’s regulations or a large share of federal funding with requirements on the use of those funds.

- **Series 1300** – Special Education Finance and Census Based Funding
 - Special education funding under the census block grant is governed primarily by federal law. The federal law sets a floor of regulation that Vermont may not go beyond in terms of what the Agency, as state education agency (SEA), and supervisory unions, as Local Educational Agencies (LEAs), must deliver. Because the General Assembly enacted Act 173 to achieve greater flexibility, our state funding rules hew tightly to the federal regulations. There is relatively little room for policy decision-making with this rule series.
- **Series 2000** – Education Quality Standards
 - The Education Quality Standards (EQS) are the primary lever for State Accountability under our ESSA State Plan, which is approved and monitored by the US Department of Education. The Agency is held accountable to follow that plan and all federal Title dollars are premised on compliance with the plan.

- **Series 2360** – Special Education Programmatic Rules
 - The entitlement to special education is governed primarily by federal law. As with the funding rules, there is relatively little room for policy decision-making with this rule series. In the areas where Vermont’s rules go beyond the federal rules, the questions raised by rulemaking will be highly technical and legal. The Agency, through the legal division, will rely on non-regulatory guidance from the federal Office of Special Education Programs (OSEP) and on case law in evaluating proposed changes to the rules.
 - The Agency as SEA is held accountable for monitoring LEA compliance with federal regulations. The state can be placed in corrective action by OSEP for noncompliance, which may include restriction on use of IDEA-B funds or mandatory repayment of funds by the state.
- **Series 2370** – Career and Technical Education
 - The Agency is in the process of receiving public comment on the Perkins V State Plan, which is required by the recent reauthorization of the Carl D. Perkins Career Technical Education Act by Congress. The State Plan, much like the ESSA State Plan, is how the federal government will hold the Agency, as SEA, accountable for the use of federal dollars.
- **Series 2400** – Adult Education
 - This rule series would establish a separate independent board to oversee adult education. The rule is not in line with statute or Series 2370 and appears to never have been implemented. It should be repealed.
- **Series 2600** – Prekindergarten
 - These rules are jointly administered by the Agency of Human Services and AOE. It is appropriate for the Agency to have authority for these rules for efficient coordination directly with AHS for administration of PreK.

Other Recommendations

If the committee’s interest is in streamlining the function of the State Board as a proactive, independent, non-partisan citizen overseer of education in Vermont, there are places within the draft bill where that intent can be clarified. Those recommendations are described in the side-by-side I submitted to the committee yesterday.

Here, however, I would like to point out several places within the draft bill where the State Board would have greater authority than in current law.

- On page 2, the new purpose language of the State Board would include responding to “Gubernatorial mandates.” Currently, the Agency serves as the Governor’s vehicle for executing education policy. It may not be appropriate to also have the State Board executing directives of the Governor, which would, according to the draft, be in addition to those given to the State Board by the General Assembly.
- On page 4, the bill amends the current authority of the Board over standards for student performance. The bill would expand the current ability of the Board to articulate reading

proficiency standards for grades kindergarten to grade 3 and give the Board the power to set standards for any and all grades it “shall determine.”

- On page 67, the bill would curtail the avenue of appeal for a district or independent school that is denied a school construction award. Instead of having the right to appeal directly to the Superior Court, the bill would require the appeal to be made to the State Board, whose decision “shall be final.”

I would encourage the Committee to pay close attention to the changes contemplated in the bill to assure they truly are merely conforming changes to current law.