VERMONT SCHOOL BOARDS ASSOCIATION

Great Governance, Excellent Education, Strong Communities

To: House Education Committee
From: Nicole L. Mace, Executive Director
Re: Modifications to Act 166; Dual Enrollment Vouchers
Date: April 12, 2018

Changes to Act 166

The VSBA, together with the VSA, VPA, and VCSEA were among the more outspoken supporters of legislation that became Act 166. Yet, from the early stages of implementation, we raised concerns about where we were headed. In fact, it was our concerns that led the legislature to request a review of Act 166 by the Secretaries of AHS and AOE.

Our concerns fall into two areas:

1. Concerns about special education and protecting the most vulnerable – the current model does not ensure resources are getting where they are needed most.
2. Concerns about affordability and efficiency

Concerns about special education and protecting the most vulnerable:

1. A 10 hour voucher does not provide access to kids who need it most. The most vulnerable families often need full day care and many of these families cannot pay over the 10 free hours. We have not seen statewide data that indicate that the voucher coupled with CCFAP funds is increasing access. This puts into question the effectiveness of Act 166 in serving the neediest children.
2. Students with disabilities do not have equal access to services. This results in children not receiving necessary early intervention or in families with children with disabilities being unable to exercise their right to Pre-K choice. Supporting supervisory union/district boards in efforts to establish Pre-K regions would help address this issue.
3. Same benefit for all income families is not best utilization of resources. We should ensure Act 166 does not become a subsidy for families of

means who would be accessing high quality early education regardless of the voucher. Data on use of prekindergarten vouchers must be collected and analyzed to determine whether the state's $32 million investment is being accessed by children and families contending with barriers associated with poverty, addiction, language, disability and geographic isolation.

4. Implementation has been regionally uneven. Analysis of where high quality programs are located within the state will be an important step in assessing quality & equity.

Concerns about affordability and efficiency:

1. The K-12 system is being asked to achieve scale reflecting declines in enrollment and efficiency in better delivery of education services. We do not have evidence that private providers are being asked to do the same, let alone achieving it. In an environment of scarce public resources, the state should require cohesive governance and delivery systems that deliver high quality, affordable prekindergarten education, just as we seek to attain them in K-12 education.
2. Neither public nor private programs can make best utilization of dollars if they do not know from year to year how many children they will serve. This problem would be addressed if school districts could work with private providers in well-defined regions.
    a. The process of establishing a Pre-K service region is too cumbersome to navigate and discourages those efforts. For instance, the cost associated with LEA's providing special education services in multiple locations outside of the supervisory union/district boundary is prohibitive. Regions would address this.
3. The joint agency administration of this law has not worked well to date. We see too much complexity and insufficient justification for that complexity. Administrative challenges arise from imposing the child care licensing rules onto the public school system that has its own thorough licensing and certification processes.

Testimony offered by some advocates this session has suggested that public schools are not safe spaces for 3 and 4 yr olds. Last year, we did a public records request of licensing violations in public and private Pre-K settings. We found the following trends:

1. Most frequent public program violation (21%) is failure to document students' time in/time out of classroom (Are school policy requirements being met?)
2. Second most frequent (20%) is failure to document evacuation drills (Question - is this in the context of statutory requirements for school evacuation drills being met?)
3. Most frequent private program violation (10%) is failure to document students' time in/time out of classroom
4. Second most frequent private program violation (8%) relates to grounds and equipment being in clean/orderly and good repair
5. The next three most frequent violations in private provider programs are: failure to ensure clean and smooth surfaces in the facility (5%), failure to protect from all unsafe conditions (5%), and failure to document staff member references (4%).

The proposed changes in the Senate bill do not resolve the concerns raised by our associations. In some instances, they appear to exacerbate issues – in particular the ability to form cohesive PreK-12 delivery systems, ensure equal access for students with disabilities, and eliminate duplicative regulation. Furthermore, in an environment where significant changes are being contemplated to the education funding formula and special education funding, changing the ADM calculation for school districts could lead to significant increases in property tax rates across the state. This change also negates the important role that school districts play in developing relationships with private providers in order to ensure a successful transition to kindergarten.

The VSBA board urges the Committee to not take action to approve the Senate's proposal to modify Act 166. Continuing to operate under the current system would be preferable to the changes being contemplated under S.257 as passed the Senate.

Dual Enrollment Funds to Private-Pay Students at Independent Schools

With respect to Section 4 of S.257 ("Dual Enrollment; Parochial Schools"), my understanding of the stated purpose of the proposed language is that it is designed to respond to concerns that Vermont may be in violation of the 2017 Supreme Court decision *Trinity Lutheran Church of Columbia, Inc. v. Comer*.

In the *Trinity Lutheran* case, the U.S. Supreme Court held that the Missouri Department of Natural Resources' policy prohibiting grant funds from going to churches and other religious organizations violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status.

In my legal opinion, the *Trinity* case does not apply to Vermont's laws governing who can participate in dual enrollment programs, because current Vermont law does not prohibit dual enrollment vouchers from going to religious institutions. Rather, Vermont law makes all private pay students attending independent schools ineligible for publicly-funded dual enrollment courses. This includes students attending parochial schools, but it also includes students attending non-religious institutions at their own expense.

This distinction is important. Vermont law does not single out students attending parochial schools as being ineligible for a public dual enrollment program. If it did, Vermont could be open to a legal challenge on the basis of the *Trinity* case. Rather, current law reflects the belief that a dual enrollment voucher is a benefit of publicly-funded education, which in Vermont is provided either at a public school or through public tuition vouchers to approved private schools.

The proposed change to the dual enrollment program will go beyond making students attending parochial schools eligible for dual enrollment funds. It will extend this publicly-funded benefit to all private-pay students at private schools in Vermont.

The VSBA has a resolution opposing indirect public support to private independent schools through the use of tax credits or subsidies for tuition or expenses. Because the proposed change in Section 4 would expand the programmatic offerings available to private-pay students in private schools at public expense, we oppose this change.