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MEMORANDUM

TO: Superintendents, Business Managers, and Special Education Directors
FROM: Heather Bouchey, Deputy Secretary of Education
Amy Fowler, Deputy Secretary of Education
Emily Byrne, Chief Financial Officer
SUBJECT: Act 173 of 2018 – An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support
DATE: UPDATED: August 22, 2018

This memo is intended to provide a high-level summary of Act 173 to school leadership and a preview of anticipated changes to Vermont’s special education system in the coming months and years.

Purpose of the Law

[Act 173 of 2018](#) proposes to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s schools. This act changes the funding model for special education from a reimbursement model to a census-based model. This new model allows more flexibility in how funds can be used, simplifies administration of funds at both state and local levels, and aligns with policy priorities, including the opportunities identified in the [District Management Group \(DMG\) report](#). The act reinforces Vermont’s commitment to comply with all provisions of the Individuals with Disabilities Education Act (IDEA) with an emphasis on maintaining state and local funding levels. Additionally, the act ensures that all students eligible for special education receive a free and appropriate education in the least restrictive environment in accordance with an Individualized Education Program (IEP).

Background

In 2016, the General Assembly directed the Agency of Education (AOE) to contract for two studies. The first study evaluated the [current special education funding model](#) and recommended a model that provides incentives for desirable practices and stimulates innovation in the delivery of services (2016 Act 148 Sec. 3). The second study looked at current practice and recommended best practices for special education service delivery (2016 Act 148 Sec. 4). The broadened scope of this report considered supports that are provided for all students who struggle. Both studies influenced the development of Act 173.

[Study of Vermont State Funding for Special Education](#)

The study on the special education funding model was conducted by researchers at the University of Vermont (UVM). It included an in-depth analysis of special education expenditures and child count data. It also looked at possible links between service delivery trends, cost and existing special education funding policies. The “Study of Vermont State

Funding for Special Education” was issued in December 2017 and includes recommendations for implementing a census-based special education funding model in Vermont. This means that rather than reimbursing school systems for what is spent on special education services, the state will authorize payments based on enrollment data.

[DMG Report](#)

The service delivery study was conducted by the District Management Group (DMG). During the 2016-2017 school year, ten diverse Supervisory Unions/Supervisory Districts (SU/SDs) participated in the study. Both qualitative and quantitative data were collected through interviews, observations, focus groups and review of educator schedules. The findings from this research were compared with evidence-based best practices to identify five opportunities for improving services and supports for students who need additional support, whether eligible for special education or not:

1. Ensure elementary Tier 1 core instruction meets most needs of most students;
2. Provide additional instructional time outside core subjects aligned to the core instruction, to students who struggle, rather than providing interventions;
3. Ensure students who struggle receive all instruction from highly skilled teachers;
4. Create or strengthen a systems-wide approach to supporting positive student behaviors based on expert support; and
5. Provide students having more intensive support needs with specialized instruction from skilled and trained experts.

Legislators recognized that changes in funding can only be successful if they are (1) in conjunction with coordinated changes in practice and (2) if given the time and support necessary to put into place the opportunities identified in the DMG report.

How funding for special education will change

UVM, the contractor for the financing study, considered census-based funding models that would provide the flexibility needed to incentivize desirable practices and stimulate innovative, evidence-based service delivery. The legislature outlined this change in reaction to limitations of the current reimbursement funding model and continued acceleration in special education costs. During the review of the current process, the contractor noted that stakeholders found the current model to be:

1. Administratively costly for both the state and local SU/SDs
2. Misaligned with current policy priorities of MTSS and PBIS
3. Incongruent in regards to incentives for identification and placement of students
4. Discouraging of cost containment
5. Unpredictable and lacking transparency

In contrast to the current reimbursement model, which allows schools to obtain reimbursement for a percentage of all allowable costs incurred to provide special education, the new system will provide SU/SDs the ability to use the dollars as they determine most appropriate to meet FAPE requirements. More specifically, the census model:

1. Allows increased flexibility in the use of funds
2. Allows the use of funds for all students, not just those on IEPs, to provide flexibility for early intervention if needed
3. Is simple and predictable

4. Aligns with the policy priorities of serving students who need additional support in both general and special education

The implementation of the census-based funding formula follows a multi-year implementation period. This will allow enough time for LEAs to adjust the models for service delivery and for the State to complete rulemaking and to develop administrative processes. The implementation will start in FY 2021 (SY 2020-21), and the census grant amount will reflect historical spending on a per SU basis. The census amount will be provided to SUs in lieu of the mainstream block grant (16 V.S.A. § 2961), the special education expenditures reimbursement (16 V.S.A. § 2963) and exceptional circumstances (16 V.S.A. § 2963a). In FY 2021, AOE will calculate the “uniform base amount” which will be the census grant amount for all SU/SDs in FY 2025. Between FY 2021 and FY 2025, all SU/SDs will gradually move to the uniform base amount. The table at the end of this memo provides a summary of these changes.

Several aspects of state special education funding are not changing. Funds for Best/Act 230, grants for consultants for students with the most significant and complex disabilities, consultants for the blind or visually impaired, and consultants for the deaf or hard of hearing will continue to be made available annually. Additionally, the Essential Early Education grant program that provides SUs with funds for 3-5 year-olds who are eligible for special education will not change.

Act 173 also addresses special education costs provided to independent schools. Independent schools may bill LEAs for costs required by an IEP that exceed the general tuition rates. An LEA may receive extraordinary cost reimbursement if the individual students’ special education costs at the independent school exceed the threshold for reimbursement. Provisions related to independent schools do not go into effect until July 1, 2022.

Act 173 also requires the use of census grant funds to continue to meet the special education maintenance of effort requirements and to carry out all requirements of IDEA. The shift away from reimbursement expense reporting to the AOE will require a review and modification of data collections associated with meeting the requirements of IDEA. These requirements will be contemplated as part of the rule-making processes.

How service delivery will change

Act 173 incorporates the opportunities from the DMG report as a means for enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont. It defines students who need additional support as those:

1. Who have an individualized education program (IEP);
2. Who have a section 504 plan under the Rehabilitation Act of 1973;
3. Who are not on an IEP or section 504 plan but whose ability to learn is negatively impacted by a disability or by social, emotional, or behavioral needs;
4. For whom English is not the primary language; or
5. Who read below grade level.

There are several changes to existing sections of Title 16 (§§ 2901 -2904) that describe a “comprehensive system of education that is designed to result, to the extent appropriate, in all students succeeding in the general education environment” [Title 16 §2901(a)]. Language

changes update descriptors for students with emotional or behavioral challenges and add consideration of trauma-sensitive programming when addressing social and emotional learning. There is also a new requirement that educators receive professional development in full implementation of a tiered system of supports.

A new provision reflects guidance from the federal Office of Special Education Programs (OSEP) stating that participation in a school's tiered system of supports cannot be used to delay in any way a timely initial evaluation of a student suspected of having a disability. It also directs AOE to adopt policy and procedures regarding student participation and progress in a tiered system of support. At this time, AOE staff are revising the MTSS Field Guide; guidelines for using data gathered from a school's tiered system of supports in the identification of students suspected of having specific learning disabilities (SLD) are in draft form. The revised field guide will update and expand on components and procedures for Vermont's model of a tiered system of supports. The SLD identification document will articulate ways to use MTSS data during the special education identification process. The AOE will also be providing information in fall 2018 that describes differences among tiered systems of support, IDEA special education requirements, and civil rights afforded by section 504 of the Rehabilitation Act of 1973.

Act 173 directs the AOE to provide training and technical assistance to assist supervisory unions in implementation of the opportunities identified in the DMG report; \$200,000 of federal IDEA B funds will be allocated to support technical assistance initiatives. Several contracts are completed or underway to support this effort. These include:

1. A contract to develop a statewide blueprint/plan for early literacy;
2. A contract to provide regional training in the fall for high leverage instructional strategies;
3. A contract in process for regional training and technical assistance on building schedules that follow the DMG opportunities; and
4. A contract in process for professional learning on effective first instruction for students who struggle in math.

Information about training and professional learning opportunities will be available by the end of August.

In addition, Vermont will receive technical assistance from the National Center for Systemic Improvement (NCSI) to participate in their *Leading By Convening* model to support implementation of the DMG opportunities. The initial goal of this work is to develop a set of common messages that can be shared by the various education organizations and providers participating in the work. Staff at the AOE are actively working to find ways of aligning efforts for implementation of DMG opportunities both internally and externally.

Other relevant items in Act 173

Advisory Group

Act 173 creates a census-based advisory group that has three duties:

1. Advise the State Board of Education on the development of rules to implement the act;
2. Advise the AOE and supervisory unions on the implementation of the act; and
3. Recommend to the General Assembly any statutory changes necessary or advisable to meet the goals of the act.

The act specifies the members of the advisory group. The group will meet not more than eight times a year from September 2018 until June 2022. The group is also charged with annual reporting on implementation of the act.

Weighting Study

Act 173 directs an appropriation of funds to the AOE in order to contract for a weighting study analyzing factors that should be used to increase the census grant to supervisory unions, based on what may cause an increase in the number of students needing support. A report of the findings of the study is due to several legislative committees on or before November 1, 2019.

Overview of Special Education Funding Changes

UPDATED: August 22, 2018

	FY2019	FY2020	FY2021	FY2022-FY2024	FY2025+
Funding Model	AOE will reimburse 60% of all special education expenditures	AOE will reimburse 60% of all special education expenditures	AOE will calculate a census amount for each SU, every SU will receive a grant equivalent to the census amount multiplied by long-term membership	AOE will provide census grants based on a published schedule that gradually moves all SUs to the uniform base amount multiplied by long-term membership	All SUs will receive the Uniform Base amount multiplied by long term membership
Service Plans	Full-service plans for all special education reimbursement	Full-service plans for all special education reimbursement	Service plans only for extraordinary costs students and federal requirements	Service plans only for extraordinary costs students and federal requirements	Service plans only for extraordinary costs students and federal requirements
Monitoring	The AOE will select SUs for expenditure monitoring	The AOE will select SUs for expenditure monitoring	To be determined	To be determined	To be determined
Threshold for extraordinary costs	State reimburses at statewide rate for the first \$50K and 90% thereafter (no change)	State reimburses at statewide rate for the first \$60K and 95% thereafter	New statutory formula	New statutory formula	New statutory formula
Special Education Rules	Under development with Working Group	Rules developed and adopted	New rules go into effect	New rules in effect	New rules in effect
State Appropriation	Based on the FY 2019 service plans that were submitted to the Agency in the fall of 2017	Based on FY2020 Service plans submitted in fall of 2018	Calculated by AOE based on census grant calculation and service plans submitted in fall of 2019	Calculated by AOE based on census grant calculation and service plans submitted previous year	Calculated by AOE based on census grant calculation and service plans submitted previous year