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MEMORANDUM

TO: Superintendents, PreK Coordinators
Prequalified Prekindergarten Programs
FROM: Secretary Daniel M. French, Ed. *DMF*
SUBJECT: Prekindergarten Eligibility
DATE: May 10, 2019

The Agency of Education has received a number of questions related to age restrictions for prekindergarten tuition under Act 166. In 2017, the Agency issued guidance stating that five-year-old students who are eligible for kindergarten in their district of residence are not also eligible for prekindergarten tuition reimbursement under Act 166. The previous guidance stated that the Agency would seek a legislative clarification of an apparent conflict in the Vermont statutes.

Because no legislative amendment is forthcoming this year, the Agency is revising its earlier guidance, which will be in effect beginning in the 2019-2020 school year. Accordingly, students who are five years old, as of the first day of school in their district of residence, who are either not eligible for **or** enrolled in kindergarten are entitled to receive 10 hours of publicly funded prekindergarten.

Background

When Act 166 of 2014 was enacted, it included a definition of "Prekindergarten child" that was seemingly inconsistent with a preexisting definition of "Prekindergarten education." An analysis of the statute and the implementing regulation are therefore necessary to determine which definition should control.

16 V.S.A § 11(a)(31) reads :

"Prekindergarten education" means services designed to provide developmentally appropriate early development and learning experiences based on Vermont's early learning standards to children who are three to four years of age and to five-year old children who are not eligible for or enrolled in kindergarten."

16 V.S.A § 829(a)(1) reads:

"Prekindergarten child" means a child who, as of the date established by the district of residence for kindergarten eligibility, is three or four years of age or is five years of age but is not yet enrolled in kindergarten."

SBE Rule 2602(7) reads:

"Prekindergarten Child means: a child who is three, four or five years of age by the date established by the district for residence for kindergarten eligibility and not yet enrolled in kindergarten."

16 V.S.A. § 11(a)(31) was last amended in Act 62 of 2007. 16 V.S.A. § 829 was enacted by Act 166 of 2014. SBE Rule 2602(7) was promulgated following the passage of Act 166 and became effective in 2016. The SBE Rules and the text of 16 V.S.A. § 829, which are consistent with one another, are both more recently enacted and more specific than the definition in 16 V.S.A. § 11(a)(31).

While § 11(a)(31) defines prekindergarten education, the operative term in determining a school district's obligation toward a particular individual is whether the individual is a prekindergarten child. ((See, 16 V.S.A. § 829(b) "No fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll...") emphasis added.)

Finally, a reading of the statutes *in pari materia* reinforces that the plain language of SBE Rule 2602 and 16 V.S.A. §829 require that a five-year-old who is eligible for kindergarten enrollment but not yet actually enrolled may receive prekindergarten under Act 166. The introductory language in both statutes supports this conclusion. The introductory language in 16 V.S.A. §11(a)(31) states, that the definitions contained in that chapter are applicable to all of Title 16, "unless the context otherwise clearly requires." 16 V.S.A. §11(a). Also, the introductory language of 16 V.S.A. §829 clearly indicates that the definitions contained within that chapter shall be used "in this section", title "prekindergarten education". Thus, the context of the later in time adopted section of prekindergarten education, 16 V.S.A. §829, requires the definition of both "prekindergarten education" and "prekindergarten child" to be used in interpreting and applying that chapter.

Next Steps

Upon request of a resident parent of a five-year-old student who is not yet enrolled in kindergarten, a school district should, as applicable:

- a. enroll the child in a prequalified prekindergarten education program that it operates; or
- b. at the request of the parent or guardian, pay tuition to a prequalified prekindergarten education program operated by a private program or a public school outside the district. SBE Rule 2603(2).

This guidance is effective for the 2019-2020 school year and after. Districts are not required to retroactively pay prekindergarten tuition for a student who was five years old as of the date of kindergarten eligibility for the 2018-2019 school year.