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SBE Legislative Strategic Planning

Act 173 of 2018 (Special Education Funding)

Purpose

This act proposes to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's schools. To support the delivery of these services, this bill also changes the funding model for special education from a reimbursement model to a census-based model. This 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 with an emphasis on maintaining state and local funding levels and ensuring 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).

The big idea: **This changes how special education is funded.**

Background

In 2016 the General Assembly directed the Agency of Education to contract for two studies. One to study the current special education funding model and recommend a model that would provide incentives for desirable practices and stimulate innovation in the delivery of services. The other to look at current practice and to recommend best practices for special education service delivery. The scope of this report was broadened to look at service delivery for all students who struggle. Both reports influenced the development of H.897 (now Act 173).

The funding study was conducted by researchers at the University of Vermont (UVM). It included an in-depth analysis of special education expenditure 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 made recommendations for implementing census-based special education funding in Vermont.

The service delivery study was conducted by the District Management Group (DMG). During the 2016-2017 school year ten geographically diverse SU/SDs participated in the study. Both qualitative and quantitative data was 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. These are:

1. ensure elementary Tier 1 instruction core instruction meets most needs of most students;

2. provide additional instructional time outside core subjects to students who struggle, rather than providing interventions instead of core instruction;
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 with more intensive support needs specialized instruction from skilled and trained experts.

Legislators recognized that the changes in funding are dependent on changes in practice and that time and support are necessary to put into place the opportunities identified in the DMG report.

The legislation 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 the 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)] Several are language changes to update descriptors for students with emotional or behavioral challenges and add consideration of trauma sensitive programming when addressing social and emotional learning. There is a new requirement that staff receive professional development in full implementation of a tiered system of supports.

A new provision in this section reflects guidance from the Office of Special Education Programs 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 the MTSS Field Guide is being revised and guidelines for using data gathered from a school’s tiered 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 the way in which MTSS data can be used in the special education identification process. The Agency will also be providing information this fall that describes differences among tiered systems of support, special education requirements and civil rights afforded by section 504 of the Rehabilitation Act of 1973.

The AOE is also tasked with providing training and technical assistance to assist supervisory unions in implementation of the opportunities identified in the DMG. The legislation directs the

Agency to use \$200,000 of federal IDEA funds for this purpose. Several contracts are completed or underway to support this effort. These include:

1. a completed contract to develop a blueprint/plan for early literacy;
2. a completed contract to provide regional trainings in the fall for high leverage instructional strategies;
3. an RFP for regional trainings and TA on building schedules that follow the DMG opportunities; and
4. an RFP for professional development on effective first instruction for students who struggle in math.

In addition, Vermont was chosen as one of the states to receive technical assistance from the National Center for Systemic Improvement to participate in their Leading by Convening model to support implementation of the DMG opportunities.

Sections of the Act that refer to the SBE/Rulemaking

§ 2962. Extraordinary reimbursement

- The State Board of Education shall define allowable special education expenditures that shall include any expenditures under federal law in order to implement fully individual education programs under IDEA, and any costs of mediation conducted by a mediator who is approved by the Secretary.
- The SBE shall establish by rule the administrative process for SUs to submit claims for extraordinary reimbursement under this section and for the review and payment of those claims

§ 2974 Special Education Program; Fiscal Review

- Annually, the Secretary shall report to the SBE regarding:
 - the total amount of census grants made to supervisory unions under section 2961 of this title;
 - the total amount of extraordinary special education reimbursement made to supervisory unions under section 2962 of this title; (3) results for special education students; (4) the availability of special education staff; (5) the consistency of special education program implementation statewide;
 - the stats of tiered systems of supports in SUs; and
 - a statewide summary of the special education student count (existing law)

Sec. 9 Census-Based Funding Advisory Group

- The group will advise the SBE on the development of proposed rules to implement this act prior to the submission of the proposed rules to ICAR
 - The group will submit a written report to House Ed, Senate Ed and SBE with its findings and recommendations on or before **Jan. 15, 2019**

- The group will submit a supplemental written report to the same committees and the SBE with a status of implementation under this act and any recommendations for legislation on or before January 15 of 2020, 2021 and 2022.

Sec. 16 Rulemaking

- The AOE shall recommend to the SBE proposed rules that are necessary to implement this act. On or before **November 1, 2019** the SBE shall adopt rules necessary to implement the act.
- Rules shall include rules that establish processes for reporting, monitoring and evaluation designed to ensure
 - the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s school districts;
 - and (2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

Sec. 20 Approved Independent Schools

- If the SBE reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, then the SBE shall notify the school in writing of the reasons for this belief and permit the school a reasonable opportunity to respond
- If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:
 - (I) conduct a school visit to assess the school’s financial capacity;
 - (II) obtain from the school such financial documentation as the review team requires to perform its assessment; and
 - (III) submit a report of its findings and recommendations to the State Board.
- If the SBE concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the SBE may take any action that is authorized by this section
- In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.
- Information provided by an independent school under this subsection that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

Sec. 20a. Approved and Recognized Independent Schools

- An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency; provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation. Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions required by law.

Sec. 21 Independent Schools

- (3) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under State Board of Education rules in order to be approved or retain its approval to receive public funding for general tuition
- (4) The terms "special education services," "LEA," and "individualized education program" or "IEP" as used in this section shall have the same meanings as defined by State Board rules.
- If a student is placed with an approved independent school under

Sec. 22 Special Education Endorsement; Approval for Special Education Categories

- (b) On or before **November 1, 2020**, the State Board of Education shall 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.

Proposed Sped Rules Timeline

- Census-Based Funding Advisory Group called to order – September 30, 2018
- AOE asks SBE to consider opening the rules – November 2018
- SBE/AOE ask ICAR to open the rules – December 2018 or January 2019 meeting
- Written report with advisory group’s findings and recommendations on the development of proposed rules, recommendations for legislation issue to the SBE, and House and Senate Education Committees –January 15, 2019
- SBE reviews written report -- January 16, 2019 meeting
- Public Comment Period ~ 6 months – January 2019 – June 2019
- LCAR/ICAR Approval – July 2019
- Go Live – October 31, 2019