

From: Pepper, James [James.Pepper@vermont.gov]
Sent: Thursday, September 08, 2016 4:10 PM
To: Springer, Darren
Subject: Fwd: executive privilege--
Attachments: DRAFT response to Admin.docx; ATT00001.htm; DRAFT letter to Supts from AOE.docx; ATT00002.htm

Please take a look at the attached memos from RH

James Pepper
Director of Intergovernmental Affairs
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Begin forwarded message:

From: "Holcombe, Rebecca" <Rebecca.Holcombe@vermont.gov>
Date: September 8, 2016 at 2:41:39 PM EDT
To: "Pepper, James" <James.Pepper@vermont.gov>
Subject: executive privilege--

Pepper,

Here are two docs.

The first is a response to your memo.

The second is a suggested email from me to the field. Please consider this.

I think if you read both, you will see what I am recommending. The concerns are real. The Admin's proposed draft doesn't solve them. We need to put this to bed so kids can get programming.

R

Rebecca Holcombe, Secretary of Education
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DRAFT response to Admin

Dear James and Sarah,

Thank you for your suggested memo.

I understand the administration's interest in having me send this memo. Before I can do this, there are several issues we need to address. I describe these below.

- 1. Requirement:** Every provider needs to pass a fingerprint supported background check in order for Superintendents to meet their obligations under Act 1 and Title 16, sections 252 and 255.

Problem: As of Friday, CDD was able to tell us that some fingerprints are coming in, but was unable to confirm that even a single provider had been cleared by their process, and unable to confirm that all programs have initiated the fingerprint-supported process.

Solution: CDD must proactively track, coordinate and disseminate verification of clearance. We need:

 1. A list of the name of every entity that has requested the fingerprint supported check (e.g. the universe of programs seeking clearance).
 2. Weekly updates regarding the information related to fingerprint clearance shared with all relevant parties.
- 2. Requirement:** Assuming every provider is cleared by CDD, we now know, due to a federal audit, that third party sharing of fingerprint results is not permissible.

Problem: Once CDD clears all providers, there must be a way to share that information with school districts in a way that meets Superintendents' obligations under Title 16, sections 252 and 255.

Proposed solution: Have the Governor issue a transition relief order which holds that completed CDD checks are sufficient for Superintendents to meet their responsibility until there is a legislative change, under the following condition. As CDD checks are completed, CDD will provide an assurance to each Superintendent for each program that includes:

 - name of the program
 - the standards against which the fingerprint clearance IS evaluated
 - verification of the employees (by name) who met the standard
 - a statement that all program employees have been cleared, signed by CDD

3. **Requirement:** 16 V.S.A. § 252 defines “unsupervised contact” as follows: (4) “Unsupervised” means not in the presence of a responsible adult in the employ of or under the direction of the independent school or school district. Because parents select the preK provider, superintendents have no direct control over the provider, unless it is a school-run preK. Some locations may be far away due to a parent’s work location, which renders supervision impossible. The minimum assurance a superintendent may have is that, at least, the provider has been cleared through a fingerprint supported background check. 16 V.S.A. § 255 requires all superintendents, headmasters of recognized or approved independent schools, and their contractors to request criminal record information for individuals who receive their dollars and may have unsupervised contact with children.

Two Problems:

- 1) Very few, if any, PK providers have cleared CDD’s process, and there is a back log due to volume of requests, since this process was only initiated in August. Again, we can reasonably expect, based on last year's backlog, that we will not have 100% of providers cleared before November 1.
- 2) Lack of supervision is a very real concern for many superintendents. Several have approached me in the last week alone with stories about potential employees they declined to hire after a fingerprint check, including:
 - Drug dealers, including some engaged in distribution of meth and distribution of marijuana to children
 - Substantiated child abuse and violation of abuse prevention orders
 - Assault
 - Aggravated disorderly conduct

These concerns have to do with their deeply felt personal and professional duty to protect vulnerable children from those who may wish to do them harm, or are likely to do them harm. While the risk may appear small to others, it is real and substantial for educators who know from experience how appealing work in schools is for all the wrong reasons to some individuals who should not be working in schools. Particularly in districts that have had to remove or prevent hire of individuals who pose a risk, as well as districts that have been involved in law suits in which fingerprint checks played a role, many will not progress with PK unless clearance has been obtained, regardless of assurances about licensing.

Proposed solution: AOE can issue a transition relief memo that says the 35 weeks can begin when fingerprint supported checks are complete and run for 35 weeks, even if that runs beyond the end of the school year, so that no child is unable to access 35 weeks of PK. In addition, I could allow for the current

year only to shift the requirement from 35 weeks for 10 hours to a total of 350 hours in programs with teachers onsite, so that even if the window is compressed, students get the same number of hours.

On a final note, a particular challenge with respect to your question on licensing is that the majority of our licensing statutes and rules are all designed with the intent of enhancing student safety. That makes it extremely awkward to address the current issue in terms of licensing. I would be happy to say the following with respect to licensing action (16 VSA 1698): given the difficult choice superintendents currently face, complying with Act 166 and complying with Act 1/16 VSA §255, it is reasonable that failure to provide 35 weeks of preK during the academic calendar year of the school would not give rise to a licensing investigation and/or licensing action.

That said, I do not think it is reasonable to proactively inform superintendents they will not be subject to a licensing investigation/licensing action for failure to adhere to a safety statute (fingerprints for all employees and contractors). The licensing statute is also a safety statute and designed to protect students.

Lastly, any relief from the licensing statute would require self-reporting by superintendents. Such reporting would require involvement of school board chair persons, and could easily become unwieldy.

I have sent separately a draft letter to Superintendents that I would like to propose as an alternative. Please let me know if this alternative might work, and I will also run it by my attorney.

Best,

Rebecca

DRAFT DRAFT

Dear Superintendents,

Thank you so much for all your efforts to support implementation of Act 166. You know, as I know, how important an opportunity this is for our children and families, and in particular, for some of our most vulnerable children and families. I appreciate all your efforts to work with partners to ensure we are wrapping these children in all available supports, so these children have the opportunity to develop the self-regulation, executive functioning and emotional skills they need in order to thrive in school and life beyond. We know how critical these early years are, and don't want to miss this opportunity.

Safety is also a paramount concern. CDD is working extremely hard to fingerprint all employees in private providers. CDD's job was made more difficult by the recent addition of new federal regulations with respect to fingerprint-supported background checks. The good news is these new federal regulations are much more stringent than our own current required checks under 16 VSA § 252 and 255. I ask you to support our partner Agency, CDD, as they rush to implement these new regulations, knowing that the increased rigor of their process over our current system is a huge step forward for child safety, and knowing that CDD is rushing to integrate these new regulations simultaneously with their effort to roll out Act 166.

CDD could not control the timing of these new federal regulations, so could not fully anticipate the challenge this would create in the ramp up to Act 166 implementation.

As a result, we are aware that many private providers are just beginning the CDD background checks, and were not cleared in time for the beginning of the school year. To the extent possible, we also want to avoid undue burden on private partners of having to undergo multiple fingerprint checks for multiple district partners. This would simply increase cost and hassle without increasing security for children.

With this memo, I seek to suggest some strategies to support partnerships, while balancing the child safety intent of Act 1, 16 VSA § 252 and 255. and our licensing regulations which are focused on child safety with the imperative to ensure every child has access to 10 hours a week for 35 weeks of high quality prekindergarten.

First, because the new CDD fingerprint-supported background check is so rigorous, we feel long term it needs to be our solution. To that end, CDD is working extremely hard and extremely carefully to track, coordinate, verify and disseminating results of its fingerprint-supported checks. As CDD checks are completed, CDD will provide an assurance to each Superintendent for each program that includes:

- name of the program

- the standards against which the fingerprint clearance IS evaluated
- verification of the employees (by name) who met the standard
- a statement that all program employees have been cleared, signed by CDD

In addition, the Federal Government recently caught us all by surprise by determining that the complete results of fingerprint checks cannot be shared by CDD with third parties, which means CDD is limited in what it can release, despite the comprehensive nature of its checks. However, given the rigor of the CDD process, along with federal oversight and monitoring of compliance with these stringent regulations, I am confident in the quality of CDD review. The administration, of which I am part, agrees that the CDD confirmation of clearance, together with clear definition of the criteria by which clearance is determined, is sufficient confirmation for you to meet your obligations under 16 VSA § 252 and 255. AOE will ask the legislature to adjust 16 VSA § 255 to reflect our preference to rely on CDD finger print supported checks for private providers.

Last year, due to my transition relief memo, you were not compelled to move forward with Act 166, and so only superintendents and systems that felt confident in their ability to independently complete fingerprinting and supervise the process in a timely way moved forward under Act 166 this past year. This year, all systems are compelled to move forward, which creates a challenge in those circumstances in which the CDD process is not complete. Some systems have longstanding relationships with their private partners and some have already verified prints for employees of all partners consistent with 16 VSA § 252 and 255. In these regions, we hear superintendents are moving forward seamlessly with implementation of Act 166 through a mixed delivery model. In some other regions, it has been more difficult to initiate and complete the fingerprint process, and more difficult to verify the universe of private partners who need to be cleared. As Secretary Justin Johnson stated in his recent email, we encourage you to consult your attorney on the best path forward for your region.

However, I do not want to lose sight of our critical and shared goal: 10 hours a week for 35 weeks of high quality prekindergarten for every child. To this end, with this memo, I am issuing a second transition relief notice that I hope will serve to ensure that every child receives this PK opportunity, even in districts and providers which have not yet been cleared by the CDD fingerprint-supported background check process, but which we expect to clear in the near future.

To that end, I am writing to give you some flexibility in when the 35 weeks begins, to ensure children do not lose access to this opportunity. Specifically, the 35 weeks of publicly funded PK can begin in private partners when fingerprint supported checks are complete and then run for 35 weeks, even if that runs beyond the end of the school year. Alternatively, in partners that have licensed educators on site and thus the capacity to do so, I allow you to execute agreements with

private partners in the current year only to contract for a total of 350 hours by the end of the current school year, such that even if the window is compressed, students still get the same number of hours of high quality PK.

Act 166 is a huge change in our state commitment to our children and to how we deliver education. It has required us to negotiate two sets of federal regulations and two sets of state regulations. Some hiccups were inevitable, but we are excited to work with you to bring this terrific opportunity to our children.

Best,

Rebecca Holcombe

