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Act 166 Guidance: February 2019

This guidance document provides information on 1) contracts with prequalified prekindergarten providers and, 2) licensed educator requirements in regards to Act 166. If you have any questions, please contact Act 166 Coordinator, Laura Greenwood at laura.greenwood@vermont.gov.

The definition of a prequalified prekindergarten education program is, “a program or provider of prekindergarten education which at a minimum satisfies the requirements set forth in Sections 2604-2606 of these rules and that has been approved by the Agencies of Education and Human Services (Rule 2602(9)).”

Contracts with Private Prequalified Partners

Public and Private Partnership Contracts

Rule 2607(1) states that “School districts that pay tuition to prequalified prekindergarten education programs shall enter into written agreements which, at a minimum, shall include the all the requirements set forth in Section 2606 above and a provision that the prequalified provider shall maintain its status as a prequalified prekindergarten education program in accordance with Sections 2604, 2605 and 2602 of these rules, and report any change in this status, including alleged or proven violations of program licensure or registration requirements, to the school district, within five days of such accusation or finding. ”

A written agreement as referred to in Rule 2607(1) is a legally binding contract. This contract is between two entities such as a school district and a private prequalified program. This contract can also be referred to as a written agreement or partnership agreement. Additionally, school districts should follow preexisting local procedures for all contract administration.

Guidance on Contract Administration

At a minimum, the contract must include;

- 1) All requirements set forth in [Section 2606 of the administrative rules](#);
- 2) A provision that the prequalified provider shall maintain its status as a prequalified prekindergarten education program in accordance with Sections 2604, 2605 and 2602.
- 3) Local contract administration requirements.

In addition, at the discretion of the school district and the private prequalified prekindergarten education program, each party may negotiate additional terms. The Agency recommends that the terms include, at minimum:

- 1) Additional program and data collection requirements,
- 2) Start and end date of the minimum 35 weeks per academic year

- 3) Invoice and payment procedures based on maintaining prequalification. This may include provisions stating that a district will withhold payments if program does not comply with the definition of Rule 2602(9) and 2607(1). This may also include provisions for retroactive payment, based on when the program regains compliance.
- 4) Dispute resolution processes
- 5) Support of professional development opportunities

School District Operated Prekindergarten Programs

School district operated prekindergarten programs that comply with the definition of a prequalified prekindergarten program as defined in 2602(9) and 2604(1) may count students in their average daily membership (ADM).

School districts are responsible for ensuring their ADM, including prekindergarten students, is accurately reported and maintained with the Agency of Education.

Licensed Educator Requirements

Center Based Private Prekindergarten Education Programs

Rule 2605(2) states, “private prequalified prekindergarten education program operated in a licensed Center Based Program shall employ, or contract for the services of, at least one teacher who holds a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education. Ten hours that the licensed teacher is present shall coincide with the hours of prekindergarten education paid for by tuition from districts;” For private programs, the licensed educator must be physically present on-site at the prequalified program during the hours in which that program is providing the 10 hours of publicly funded prekindergarten for every student.

“Physically present on-site” means in the same facility or in the same classroom as the prekindergarten student receiving their 10 hours of publicly funded prekindergarten education. The licensed educator for the prequalified program cannot be off-site or in a different facility of the prekindergarten student.

If a program is operating multiple prekindergarten sessions a day (e.g. morning and afternoon), a licensed educator must be physically present on-site during each session. Every student receiving 10 hours of publicly funded prekindergarten education must have a licensed educator physically present on-site during that student’s 10 hours of prekindergarten education.

Best practice for high quality prekindergarten instruction, though not required, would be the licensed educator is leading instruction, facilitating lessons, and engaging with students in the student’s classroom(s) for their prekindergarten education hours.

District-Operated Prekindergarten Education Programs

Rule 2605(1) states, “Teachers in each prekindergarten classroom in a district-operated prekindergarten education programs shall hold a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education;”

A licensed teacher with the appropriate endorsement must be physically present in each prequalified prekindergarten classroom while students are present for the minimum of 10 hours of publicly funded prekindergarten. A licensed teacher in each classroom is required for all public schools for K-12 and prekindergarten.

Registered or Licensed Family Child Care Home Programs

Rule 2605(3) allows these programs to meet either of the above requirements for public and private programs. Additionally, these programs can receive, “regular, hands-on active training and supervision from a teacher who holds a valid Vermont educator license with an endorsement in either early childhood education or early childhood special education at least three hours per week, during each of the 35 weeks per year in which prekindergarten education is paid for by tuition from districts, and is covered by the contract terms discussed above. The operator shall maintain appropriate written documentation of the supervision on location.”

This supervision must take place within the 35 weeks that prekindergarten students are receiving publicly funded prekindergarten education. The supervision cannot take place before or after the 35 weeks in which students are receiving their prekindergarten education.

Additionally, it is required that the operator maintains appropriate written documentation of the supervision on location.

Loss or Change in Licensed Educator

If a prequalified prekindergarten education program loses or has a change in their licensed educator(s), the program must complete and submit the prequalification [update form](#) to the AOE.

As required, the update form must be submitted to the AOE within five school days of the educator’s official last day of work. The program is allowed 30 school days to hire or contract with a new licensed educator and inform the AOE. If the official last day of work is within 30 school days of the last day of school for the district, an educator must be hired or contracted with by the first day of school for the upcoming school year.

Within this 30 day school day period, the program must maintain compliance with all other applicable prequalification requirements to be considered and maintain a program’s prequalification status.