

H.897

An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 1, Findings, by adding a new subsection, to be subsection (f), to read:

(f) The General Assembly agrees with the findings in the Delivery of Services Report and with the advantages of moving to a census-based special education funding model as described in the Funding Report. The General Assembly recognizes that changing the models for delivery of services and funding for students who require additional support is a significant change for school systems and their constituencies, and that they will require time and assistance in making necessary adjustments.

Second: In Sec. 2, Goals, by adding a new subsection, to be subsection (d), to read:

(d) To provide additional staff and resources to the Agency of Education to support its work with supervisory unions and schools that are transitioning to the best practices recommended in the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” issued by the District Management Group in November 2017.

Third: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2942, by striking out subdivision (8)(D) in its entirety and inserting in lieu thereof the following:

(D) for whom English is not the primary language; or

Fourth: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2962 in subsection (e), in the first sentence, by striking out the phrase “individualized education plan” and inserting in lieu thereof the phrase “individualized education program”.

Fifth: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2967, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) On or before December 15, the Secretary shall publish an estimate, by each supervisory union ~~and its member districts to the extent they anticipate reimbursable, of its anticipated special education~~ expenditures under this chapter, ~~of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in~~ for the ensuing school year.

Sixth: In Sec. 9, Census-based Funding Advisory Group, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Membership. The Advisory Group shall be composed of the following 14 members:

(1) the Executive Director of the Vermont Superintendents Association or designee;

(2) the Executive Director of the Vermont School Boards Association or designee;

(3) the Executive Director of the Vermont Council of Special Education Administrators or designee;

(4) the Executive Director of the Vermont Principals' Association or designee;

(5) the Executive Director of the Vermont Independent Schools Association or designee;

(6) the Executive Director of the Vermont-National Education Association or designee;

(7) the Secretary of Education or designee;

(8) one member selected by the Vermont-National Education Association who is a special education teacher;

(9) one member selected by the Vermont Association of School Business Officials;

(10) one member selected by the Vermont Legal Aid Disability Law Project;

(11) one member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;

(12) the Commissioner of the Vermont Department of Mental Health or designee;

(13) one member who represents an approved independent school selected by the Council of Independent Schools; and

(14) one member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

Seventh: In Sec. 9, Census-based Funding Advisory Group, by striking out subsection (h) in its entirety and inserting in lieu thereof the following:

(h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for per diem compensation and reimbursement under subsection (g) of this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide funding for per diem compensation and reimbursement under subsection (g) of this section.

Eighth: By striking out Sec. 20 in its entirety and by inserting in lieu thereof a new Sec. 20 to read as follows:

Sec. 20. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with the Board's rules for approved independent schools. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school ~~has~~ 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.

* * *

(5) The State Board may revoke ~~or~~, suspend, or impose conditions upon the approval of an approved independent school, after having provided an opportunity for a hearing, for substantial failure to comply with the minimum course of study, for failure to demonstrate that the school has the resources required to meet its stated objectives, for failure to comply with statutory requirements or the Board's rules for approved independent schools, or for failure to report under subdivision (4) of this subsection (b). Upon that revocation or suspension, students required to attend school who are enrolled

in that school shall become truant unless they enroll in a public school, an approved or recognized independent school, or a home study program.

* * *

(8)(A) If an approved independent school experiences any of the following financial reporting events during the period of its approved status, the school shall notify the Secretary of Education within five days after its knowledge of the event unless the failure is de minimis:

(i) the school's failure to file its federal or State tax returns when due, after permissible extension periods have been taken into account;

(ii) the school's failure to meet its payroll obligations as they are due or to pay federal or State payroll tax obligations as they are due;

(iii) the school's failure to maintain required retirement contributions;

(iv) the school's use of designated funds for nondesignated purposes;

(v) the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

(vi) the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State, or regional agency recognized by the State Board for accrediting purposes; or

(vii) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

(B)(i) If the State Board reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, then the State Board shall notify the school in writing of the reasons for this belief and permit the school a reasonable opportunity to respond.

(ii) 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.

(iii) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.

(iv) 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.

(C) 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.

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Ninth: By adding a new section, to be Sec. 20a, to read:

Sec. 20a. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved 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.

* * *

Tenth: In Sec. 21, amending 16 V.S.A. § 2973, by striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following:

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school that accepts public tuition shall enroll any student with an individualized education program who requires special education services and who is placed in 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 (LEA); 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 LEA and the school.

(2) In placing a student with an independent school under subdivision (1) of this subsection, the student's individualized education program team and the LEA shall comply with all applicable federal and State requirements.

(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.

(b)(1) The Secretary of Education shall establish minimum standards of services for students receiving special education services in independent schools in Vermont; shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the Agency and school districts for tuition, room, and board based on the level of services; and may advise independent schools as to the need for certain special education services in Vermont.

(2)(A) The Secretary of Education shall set, after consultation with independent schools in Vermont, and based on the level of services provided by the schools, the maximum rates to be paid by the Agency and supervisory unions or school districts for tuition, room, and board for residential placement of students who require special education services. The amount charged by an independent school for tuition shall reflect the school’s actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of these maximum rates where the Secretary deems warranted.

(B)(i) An approved independent school that enrolls a student under subdivision (a)(1) of this section may bill the responsible LEA for excess

special education costs incurred by the independent school in providing special education services beyond those covered by general tuition. Reimbursement of these excess special education costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting. The Agency of Education shall publish specific elements that must be included as part of an independent school's invoice for excess special education costs, and these elements shall be included in the written agreement required under subdivision (c)(2) of this section.

(ii) In establishing the direct-cost rates for reimbursement under this subdivision (B), the Secretary shall apply the principle of treating an approved independent school and a public school with parity in the amount of federal, State, and local contributions to cover the costs of providing special education services.

(iii) An approved independent school that enrolls a student under subdivision (a)(1) of this section shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subdivision (B) to the school are reasonable in relation to the special education services provided by the school. The Secretary may withhold, or direct an LEA to withhold, payment under this subdivision pending the Secretary's receipt of required documentation under this subdivision, or may withhold, or direct an LEA to withhold, an amount

determined by the Secretary as not reasonable in relation to the special education services provided by the school.

(C)(i) The Secretary shall set, after consultation with independent schools in Vermont, the maximum tuition rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP 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 LEA and the school. The maximum tuition rates shall be based on the level of services provided by the school.

(ii) The tuition rates established by the Secretary under this subdivision (C) shall be no more than the costs that are reasonably related to the level of services provided by the school and shall be set forth on a form prescribed for that purpose by the Secretary of Education. The Secretary shall determine the relationship between costs and the level of services by using generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(iii) After the Secretary approves a tuition rate for an independent school under this subdivision (C), the school shall not exceed that tuition rate until such time as a new tuition rate is approved by the Secretary.

Eleventh: In Sec. 21, amending 16 V.S.A. § 2973, in subdivision (c)(1), by striking out subdivision (C) in its entirety and inserting in lieu thereof the following:

(C) employing or contracting with staff who have the required licensure to provide special education services;

Twelfth: In Sec. 21, amending 16 V.S.A. § 2973, in subsection (c), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) An approved independent school that enrolls a student requiring special education services who is placed with the school under subdivision (a)(1) of this section:

(A) shall enter into a written agreement with the LEA committing to the requirements under subdivision (1) of this subsection (c); and

(B) shall ensure that qualified school personnel attend planning meetings and IEP meetings for the student.

Thirteenth: In Sec. 21, amending 16 V.S.A. § 2973, by striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d)(1) If a student is placed with an approved independent school under subsection (a) of this section and either the LEA and the school each certifies, or the hearing officer under subdivision (3) of this subsection certifies, to the Secretary of Education that the school is unable to provide required IEP services due to its inability to retain qualified staff, then the LEA shall make

another placement that satisfies the federal requirements to provide the student with a free and appropriate public education in the least restrictive environment.

(2) If the conditions in subdivision (1) of this subsection are satisfied:

(A) the approved independent school shall not be subject to any disciplinary action or the revocation of its approved status by the State Board of Education due to its failure to enroll the student; and

(B) no private right of action shall be created on the part of the student or his or her family members, or any other private party, to:

(i) require the LEA to place the student with the approved independent school or the school to enroll the student; or

(ii) hold the LEA or the approved independent school responsible for monetary damages due to the failure of the school to enroll the student or the necessity for the LEA to make an alternative placement.

(3) If the LEA and approved independent school do not agree on whether the school is unable to retain qualified staff under subdivision (1) of this subsection, then the LEA and the school shall jointly contract with a hearing officer to conduct a hearing with the parties and make a determination, which shall be final. The cost for the hearing officer shall be split evenly between the two parties.

Fourteenth: By striking out the remaining section, effective dates, and its reader assistance heading in their entireties and by inserting in lieu thereof the following:

Sec. 22. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR
SPECIAL EDUCATION CATEGORIES

(a) On or before November 1, 2019, the Vermont Standards Board for Professional Educators shall review its special educator endorsement requirements and initiate rulemaking to update its rules to ensure that these requirements do not serve as a barrier to satisfying statewide demands for licensed special educators.

(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.

* * * Effective Dates * * *

Sec. 23. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (16 V.S.A. § 4001); and

(3) Sec. 17 (transition).

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, 2020.

(c) Secs. 20a-21 (approved independent schools) shall take effect on July 1, 2022.

(d) This section and the remaining sections shall take effect on passage.