

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Education to which was referred House Bill No. 897
3 entitled “An act relating to enhancing the effectiveness, availability, and equity
4 of services provided to students who require additional support” respectfully
5 reports that it has considered the same and recommends that the House concur
6 in the Senate proposal of amendment with further amendment thereto as
7 follows:

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

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

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

19 (d) To provide additional staff and resources to the Agency of Education to
20 support its work with supervisory unions and schools that are transitioning to
21 the best practices recommended in the report entitled “Expanding and

1 Strengthening Best-Practice Supports for Students who Struggle” issued by the
2 District Management Group in November 2017.

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

5 (8) A “student who requires additional support” means a student who:

6 (A) is on an individualized education program;

7 (B) is on a section 504 plan under the Rehabilitation Act of 1973, 29
8 U.S.C. § 794;

9 (C) is not on an individualized education program or section 504 plan
10 but whose ability to learn is negatively impacted by a disability or by social,
11 emotional, or behavioral needs, or whose ability to learn is negatively impacted
12 because the student is otherwise at risk; or

13 (D) reads below grade level.

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

16 (b) Membership. The Advisory Group shall be composed of the following
17 14 members:

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

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

1 (3) the Executive Director of the Vermont Council of Special Education

2 Administrators or designee;

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

4 designee;

5 (5) the Executive Director of the Vermont Independent Schools

6 Association or designee;

7 (6) the Executive Director of the Vermont-National Education

8 Association or designee;

9 (7) the Secretary of Education or designee;

10 (8) one member selected by the Vermont-National Education

11 Association who is a special education teacher;

12 (9) one member selected by the Vermont Association of School

13 Business Officials;

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

15 Project;

16 (11) one member who is either a family member, guardian, or education

17 surrogate of a student requiring special education services or a person who has

18 received special education services directly, selected by the Vermont Coalition

19 for Disability Rights;

20 (12) the Commissioner of the Vermont Department of Mental Health or

21 designee;

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

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

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

10 (h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year
11 2018 from the General Fund to the Agency of Education to provide funding for
12 per diem compensation and reimbursement under subsection (g) of this section.
13 The Agency shall include in its budget request to the General Assembly for
14 each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide
15 funding for per diem compensation and reimbursement under subsection (g) of
16 this section.

17 Sixth: In Sec. 20, amending 16 V.S.A. § 166, in subsection (b), by striking
18 out subdivision (1) in its entirety and inserting in lieu thereof the following:

19 (1) On application, the State Board shall approve an independent school
20 that offers elementary or secondary education if it finds, after opportunity for
21 hearing, that the school provides a minimum course of study pursuant to

1 section 906 of this title and that it substantially complies with the Board's rules
2 for approved independent schools.

3 Seventh: In Sec. 20, amending 16 V.S.A. § 166, in subsection (b), by
4 striking out subdivision (3) in its entirety and inserting in lieu thereof the
5 following:

6 (3) Approval may be granted without State Board evaluation in the case
7 of any school accredited by a private, State, or regional agency recognized by
8 the State Board for accrediting purposes.

9 Eighth: By adding a new section, to be Sec. 21, to read:

10 Sec. 21. 16 V.S.A. § 166 is amended to read:

11 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

12 * * *

13 (b) Approved independent schools.

14 (1) On application, the State Board shall approve an independent school
15 that offers elementary or secondary education if it finds, after opportunity for
16 hearing, that the school provides a minimum course of study pursuant to
17 section 906 of this title and that it substantially complies with all statutory
18 requirements for approved independent schools and the Board's rules for
19 approved independent schools. An independent school that intends to accept
20 public tuition shall be approved by the State Board only on the condition that
21 the school agrees, notwithstanding any provision of law to the contrary, to

1 enroll any student who requires special education services and who is placed in
2 or referred to the approved independent school as an appropriate placement
3 and least restrictive environment for the student by the student’s individualized
4 education plan team or by the local education agency; provided, however, that
5 this requirement shall not apply to an independent school that limits enrollment
6 to students who are on an individualized education plan or a plan under Section
7 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled
8 pursuant to a written agreement between the local education agency and the
9 school.

10 * * *

11 (3) Approval may be granted without State Board evaluation in the case
12 of any school accredited by a private, State, or regional agency recognized by
13 the State Board for accrediting purposes, provided that the State Board shall
14 determine that the school complies with all student enrollment provisions
15 required by law.

16 * * *

17 Ninth: By renumbering Sec. 21 to be Sec. 22.

18 Tenth: In renumbered Sec. 22, amending 16 V.S.A. § 2973, by striking out
19 subsection (b) in its entirety and inserting in lieu thereof the following:

20 (b)(1) The Secretary of Education shall establish minimum standards of
21 services for students receiving special education services in independent

1 schools in Vermont; ~~shall set, after consultation with independent schools in~~
2 ~~Vermont, the maximum rates to be paid by the Agency and school districts for~~
3 ~~tuition, room, and board based on the level of services; and may advise~~
4 independent schools as to the need for certain special education services in
5 Vermont.

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

16 (B)(i) An approved independent school that enrolls a student under
17 subdivision (a)(1) of this section on a nonresidential basis may bill the
18 responsible LEA for excess special education costs incurred by the
19 independent school in providing special education services beyond those
20 covered by general tuition. Reimbursement of these excess special education
21 costs shall be based on the direct-costs rates approved by the Secretary for

1 services actually provided to the student consistent with the Agency of
2 Education Technical Manual for special education cost accounting. The
3 Agency of Education shall publish specific elements that must be included as
4 part of an independent school’s invoice for excess special education costs, and
5 these elements shall be included in the written agreement required under
6 subdivision (c)(2) of this section.

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

12 (iii) An approved independent school that enrolls a student under
13 subdivision (a)(1) of this section on a nonresidential basis shall provide such
14 documentation to the Secretary as the Secretary deems necessary in order to
15 ensure that amounts payable under this subdivision (B) to the school are
16 reasonable in relation to the special education services provided by the school.
17 The Secretary may withhold, or direct an LEA to withhold, payment under this
18 subdivision pending the Secretary’s receipt of required documentation under
19 this subdivision, or may withhold, or direct an LEA to withhold, an amount
20 determined by the Secretary as not reasonable in relation to the special
21 education services provided by the school.

1 (C)(i) The Secretary shall set, after consultation with independent
2 schools in Vermont, the maximum tuition rates to be paid by the Agency and
3 supervisory unions or school districts to independent schools that limit
4 enrollment to students who are on an IEP or a plan under Section 504 of the
5 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
6 a written agreement between the LEA and the school. The maximum tuition
7 rates shall be based on the level of services provided by the school.

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

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

18 Eleventh: In renumbered Sec. 22, amending 16 V.S.A. § 2973, in
19 subdivision (c)(1), by striking out subdivision (C) in its entirety and inserting
20 in lieu thereof the following:

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

3 Twelfth: In renumbered Sec. 22, amending 16 V.S.A. § 2973, in subsection
4 (c), by striking out subdivision (2) in its entirety and inserting in lieu thereof
5 the following:

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

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

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

13 Thirteenth: In renumbered Sec. 22, amending 16 V.S.A. § 2973, by striking
14 out subsection (d) in its entirety and inserting in lieu thereof the following:

15 (d)(1) If a student is placed with an approved independent school under
16 subsection (a) of this section and the LEA and the school each certifies to the
17 Secretary of Education that the school is unable to provide required IEP
18 services due to its inability to retain qualified staff, then the LEA shall make
19 another placement that satisfies the federal requirements to provide the student
20 with a free and appropriate public education in the least restrictive
21 environment.

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

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

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

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

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

12 (3) If the LEA and approved independent school do not agree on
13 whether the school is unable to retain qualified staff under subdivision (1) of
14 this subsection, then the Agency of Education shall appoint a hearing officer
15 from within the Agency to conduct a hearing with the parties and make a
16 determination, which shall be final.

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

1 Sec. 23. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR
2 SPECIAL EDUCATION CATEGORIES

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

8 (b) On or before November 1, 2019, the State Board of Education shall
9 review its rules for approving independent schools in specific special education
10 categories and shall update these rules to simplify and expedite the approval
11 process.

12 * * * Effective Dates * * *

13 Sec. 24. EFFECTIVE DATES

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

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

16 (2) Sec. 15 (16 V.S.A. § 4001); and

17 (3) Sec. 17 (transition).

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

19 (c) Secs. 21-22 (approved independent schools) shall take effect on July 1,
20 2023.

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

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3 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE