

H.897

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

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Findings * * *

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

(c) The Delivery of Services Report made the following five recommendations on best practices for the delivery of special education services:

(1) ensure 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 specialized instruction from skilled and trained experts to students with more intensive needs.

(d) The Funding Report noted, based on feedback from various stakeholders, including educators, school leaders, State officials, parents, and others, that Vermont's existing reimbursement model of funding special education has a number of limitations in that it:

(1) is administratively costly for the State and localities;

(2) is misaligned with policy priorities, particularly with regard to the delivery of a multitiered system of supports and positive behavioral interventions and supports;

(3) creates misplaced incentives for student identification, categorization, and placement;

(4) discourages cost containment; and

(5) is unpredictable and lacks transparency.

(e) The Funding Report assessed various funding models that support students who require additional support, including a census-based funding model. A census-based model would award funding to supervisory unions based on the number of students within the supervisory union and could be used by the supervisory union to support the delivery of services to all students. The Funding Report noted that the advantages of a census-based model are that it is simple and transparent, allows flexibility in how the funding is used by supervisory unions, is aligned with the policy priorities of serving students who require additional support across the general and special education service-delivery systems, and is predictable.

(f) The General Assembly finds that:

(1) students who require additional support would be better served if supervisory unions adopted the best practices recommended in the Delivery of Services Report;

(2) the State's current reimbursement model of funding special education serves as an impediment to adopting these best practices, largely due to the constraint on the use of funds and the misalignment with the policy priorities of serving students who require additional support across the general and special education service-delivery systems;

(3) the census-based model of funding for students who require additional support would enable supervisory unions to adopt the best practices recommended in the Delivery of Services Report, largely due to the flexibility in how the funds could be used by supervisory unions and the alignment with the policy priorities; and

(4) the census-based model of funding will result, over time, in cost containment for special education services, which will be realized through lower property tax rates or the ability for localities to use funds for other educational purposes.

(g) 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.

* * * Goals * * *

Sec. 2. GOALS

(a) By enacting this legislation, the General Assembly intends to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts, including students receiving special education services and students who need additional support but do not receive special education services.

(b) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal

year 2021, for school year 2020-2021, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State’s policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

(c) 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.

* * * Census-based Funding Early Implementation Program * * *

Sec. 3. CENSUS-BASED FUNDING EARLY IMPLEMENTATION
PROGRAM

(a) The Census-based Funding Early Implementation Program (Program) is created for fiscal year 2020, for the 2019-2020 school year. A supervisory union may participate in the Program if it satisfies each of the following conditions:

(1) it was included in the report delivered to the Agency of Education entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” in November 2017 from the District Management Group or it otherwise worked with the District Management Group to improve its delivery of special education services; and

(2) it notifies the Agency of Education between October 1 and October 15, 2018 of its election to participate in the Program.

(b) In this section, references to “supervisory unions” or “participating supervisory unions” shall mean participants in the Program. This section shall supersede any provisions of 16 V.S.A. chapter 101 to the contrary.

(c) In lieu of payments and reimbursements under 16 V.S.A. chapter 101, each participating supervisory union shall receive an educational support grant pursuant to subsection (d) of this section and, if a participating supervisory union has extraordinary special education expenditures, it shall be eligible for extraordinary special education reimbursement pursuant to subsection (e) of this section.

(d)(1) As used in this subsection:

(A) “Average daily membership” shall have the same meaning as in 16 V.S.A. § 4001(1), except it shall exclude State-placed students.

(B) “Average daily membership of a supervisory union” means the aggregate average daily membership of the school districts that are members of the participating supervisory union or, for a participating supervisory district, the average daily membership of the supervisory district.

(C) “Long-term membership” of a participating supervisory union in any school year means the average of the participating supervisory union’s average daily membership over three school years.

(2)(A) The amount of the educational support grant for a participating supervisory union shall be:

(i) the average amount it received for fiscal years 2016, 2017, and 2018 from the State for special education under 16 V.S.A. §§ 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances); increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (2) shall be divided by the participating supervisory union's long-term membership to determine the base amount of the educational support grant, which is the amount of the educational support grant calculated on a per student basis.

(e)(1)(A) As used in this subsection (e), "child" means a student with disabilities who is three years of age or older in the current school year.

(B) As used in this subsection (e), "extraordinary expenditures" means a participating supervisory union's allowable special education expenditures that for any one child in fiscal year 2020 exceed the threshold amount of \$60,000.00.

(C) The State Board shall define allowable special education expenditures that shall include any expenditures required under federal law and any costs of mediation conducted by a mediator who is approved by the Secretary.

(2) If a participating supervisory union has extraordinary expenditures, it shall be eligible for extraordinary special education reimbursement (extraordinary reimbursement) as provided in this subsection.

(3) A participating supervisory union that has extraordinary expenditures in fiscal year 2020 for any one child shall be eligible for extraordinary reimbursement equal to:

(A) an amount equal to its special education expenditures in that fiscal year for that child that exceed the extraordinary expenditures threshold amount under subdivision (1)(B) of this subsection (e) (excess expenditures) multiplied by 95 percent; plus

(B) an amount equal to the lesser of:

(i) the amount of its excess expenditures; or

(ii)(I) the extraordinary expenditures threshold amount under subdivision (1)(B) of this subsection (e), minus

(II) the base amount of the educational support grant received by the supervisory union under subdivision (d)(2)(B) of this section for that fiscal year, multiplied by

(III) 60 percent.

(4) The State Board shall establish by rule the administrative process for supervisory unions to submit claims for extraordinary reimbursement under this subsection and for the review and payment of those claims.

(f) The following sections of Title 16 shall not apply to the participating supervisory unions:

(1) § 2961 (standard mainstream block grants);

(2) § 2962 (extraordinary services reimbursement);

(3) § 2963 (special education expenditures reimbursement);

(4) § 2963a (exceptional circumstances);

(5) § 2964 (service plan); and

(6) § 2968 (reports).

(g) The State's policy, as stated in 16 V.S.A. §§ 2941 (policy and purpose), 2963 (special education expenditures reimbursement), and 2967 (aid projection; State share), to pay 60 percent of the statewide costs expended by public education at institutions for children with disabilities shall not apply to expenditures by the participating supervisory unions for children with disabilities.

(h) The Secretary shall include the participating supervisory unions in the aid projection required by 16 V.S.A. § 2967 (aid projection; State share). The Secretary shall include in its report under 16 V.S.A. § 2974(a) (special education program; fiscal review):

(1) the total amount of educational support grants made to participating supervisory unions under subsection (d) of this section; and

(2) the total amount of extraordinary special education reimbursement made to participating supervisory unions under subsection (e) of this section.

(i)(1) On or before August 15, 2019, December 15, 2019, and April 15, 2020, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each participating supervisory union one-third of the educational support grant due to the supervisory union under subsection (d) of this section for fiscal year 2020.

(2) On or before November 15, 2019, January 15, 2020, April 15, 2020, and August 1, 2020, each participating supervisory union, to the extent it incurs extraordinary special education expenditures under subsection (e) of this section, shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total extraordinary special education expenditures actually incurred during the reporting period.

(3) On or before December 15, 2019, February 15, 2020, May 15, 2020, and September 15, 2020, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each participating supervisory union the amount of extraordinary special education reimbursement incurred by the

supervisory union under subsection (e) of this section that is unreimbursed and determined by the Agency of Education to be payable to the supervisory union.

(j) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include spending attributable to the share of special education spending for a district that is a member of a participating supervisory union that is not reimbursed as an extraordinary special education reimbursement under subsection (e) of this section for any student in the fiscal year occurring two years prior.

(k) On or before November 1, 2018, each participating supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union’s projected extraordinary special education reimbursement for its next fiscal year under subsection (e) of this section.

(l) The participating supervisory unions shall assist the Census-based Funding Advisory Group created under Sec. 9 of this act and the State Board of Education in the development of the State Board’s proposed rules to implement this act.

(m) The Secretary of Education is empowered to apply, waive, or modify the application of State Board of Education rules for participating supervisory unions in a manner that is consistent with this section.

* * * Census-based Funding Model; Amendment of Special
Education Laws * * *

Sec. 4. 16 V.S.A. chapter 101 is amended to read:

CHAPTER 101. SPECIAL EDUCATION

Subchapter 1. General Provisions

§ 2941. POLICY AND PURPOSE

It is the policy of the State to ensure equal educational opportunities for all children in Vermont. This means that children with disabilities are entitled to receive a free appropriate public education. ~~It is further the policy of the State to pay 60 percent of the statewide costs expended by public education for children with disabilities.~~ The purpose of this chapter is to enable the Agency to ensure the provision of the special educational facilities and instruction necessary to meet the needs of children with disabilities.

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Subchapter 2. Aid for Special Education and Support Services

§ 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ EDUCATIONAL
SUPPORT GRANT

(a) ~~Each supervisory union shall be eligible to receive a standard mainstream block grant each school year. The mainstream block grant shall be equal to the supervisory union's mainstream salary standard multiplied by 60 percent.~~

~~(b) The supervisory union shall expend all such assistance for special education services or for remedial or compensatory services in accordance with its service plan as required under section 2964 of this title. It shall likewise expend, from local funds, an amount not less than 40 percent of its mainstream salary standard for special education.~~

~~(c) As used in this section:~~

~~(1) "Mainstream salary standard" means:~~

~~(A) the supervisory union's full time equivalent staffing for special education for the preceding year multiplied by the average special education teacher salary in the State for the preceding year; plus~~

~~(B) an amount equal to the average special education administrator salary in the State for the preceding year, plus, for any supervisory union with member districts which have in the aggregate more than 1,500 average daily membership, a fraction of an additional full time equivalent salary for a special education administrator, the numerator of which is the aggregate average daily membership of the supervisory union's member districts minus 1,500, and the denominator of which is the aggregate average daily membership of member districts in the largest supervisory union in the State minus 1,500.~~

~~(2) "Full time equivalent staffing" means 9.75 special education teaching positions per 1,000 average daily membership.~~

~~(d) If in any fiscal year, a supervisory union in which a school is maintained does not expend an amount equal to its mainstream salary standard~~

~~on special education expenditures, the supervisory union may expend the balance, including the matching funds, to provide support and remedial services pursuant to section 2902 or 2903 of this title. A supervisory union choosing to expend funds in this way shall submit a report describing the services provided and their costs with the final financial report submitted under section 2968 of this title.~~

As used in this section:

(1) “Average daily membership” shall have the same meaning as in subdivision 4001(1) of this title, except it shall exclude State-placed students.

(2) “Average daily membership of a supervisory union” means the aggregate average daily membership of the school districts that are members of the supervisory union or, for a supervisory district, the average daily membership of the supervisory district.

(3) “Educational support grant adjustment” means an increase, as determined by State Board of Education rules, to the amount of the educational support grant provided to a supervisory union on account of the supervisory union’s relatively higher costs in supporting students who require additional support due to the number of these students or the nature of the services required.

(4) “Long-term membership” of a supervisory union in any school year means the average of the supervisory union’s average daily membership over three school years.

(b) The State commits to satisfying its special education maintenance of fiscal support requirement under federal law (34 C.F.R. § 300.163(a)). Each supervisory union shall be eligible to receive an educational support grant each fiscal year to support the provision of the supervisory union's comprehensive system of educational services, as required under sections 2901 and 2902 of this title. The amount of the educational support grant for a supervisory union shall be calculated in accordance with subsection (c) of this section.

(c)(1)(A) For fiscal year 2021, the amount of the educational support grant for a supervisory union shall be:

(i) the average amount it received for fiscal years 2017, 2018, and 2019 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (1) shall be divided by the supervisory union's long-term membership, to determine the base amount of the educational support grant, which is the amount of the educational support grant calculated on a per student basis.

(2) The State Board of Education shall establish by rule a uniform base amount of the educational support grant that shall apply to all supervisory unions for fiscal year 2025. In determining the uniform base amount, the State Board of Education shall:

(A) assume total State funding of educational support grants, including any educational support grant adjustments, in an amount that satisfies but does not exceed the amount necessary for the State to satisfy its special education maintenance of fiscal support requirement under federal law; and

(B) take into account:

(i) the statewide average daily membership for students in prekindergarten through grade 12;

(ii) the various fiscal year 2021 base amounts of the supervisory unions; and

(iii) such other factors as the Board determines relevant.

(3) To determine the amount of a supervisory union's educational support grant in fiscal year 2025 and subsequent fiscal years, the uniform base amount shall be multiplied by the supervisory union's long-term membership.

(4) For fiscal years 2022, 2023, and 2024, the amount of the educational support grant for a supervisory union shall be determined by multiplying the supervisory union's long-term membership by a base amount established under State Board of Education rules. The base amount established under State

Board of Education rules shall be designed to move gradually a supervisory union's fiscal year 2021 base amount to the fiscal year 2025 uniform base amount established by the State Board under subdivision (2) of this subsection.

(5) For fiscal year 2021 and subsequent fiscal years, the amount of the educational support grant shall be increased by the educational support grant adjustment for supervisory unions that qualify for the adjustment.

§ 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION

REIMBURSEMENT

~~(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.~~

~~(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to 90 percent of its extraordinary special education expenditures.~~

~~(c) As used in this subchapter, "extraordinary special education expenditures" means a school district's or supervisory union's allowable expenditures that for any one child exceed \$70,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable~~

~~expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.~~

(1) As used in this section, “child” means a student with disabilities who is three years of age or older in the current school year.

(2) As used in this subchapter, “extraordinary expenditures” means a supervisory union’s allowable special education expenditures that for any one child in a fiscal year exceed \$60,000.00, increased annually by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(3) The State Board of Education shall define allowable special education expenditures that shall include any expenditures required under federal law and any costs of mediation conducted by a mediator who is approved by the Secretary.

(b) If a supervisory union has extraordinary expenditures, it shall be eligible for extraordinary special education reimbursement (extraordinary reimbursement) as provided in this section.

(c) A supervisory union that has extraordinary expenditures in a fiscal year for any one child shall be eligible for extraordinary reimbursement equal to:

(1) an amount equal to its special education expenditures in that fiscal year for that child that exceed the extraordinary expenditures threshold amount under subdivision (a)(2) of this section (excess expenditures) multiplied by 95 percent; plus

(2) an amount equal to the lesser of:

(A) the amount of its excess expenditures; or

(B)(i) the extraordinary expenditures threshold amount under subdivision (a)(2) of this section; minus

(ii) the base amount of the educational support grant received by the supervisory union under subsection 2961(c) of this title for that fiscal year; multiplied by

(iii) 60 percent.

(d) The State Board of Education shall establish by rule the administrative process for supervisory unions to submit claims for extraordinary reimbursement under this section and for the review and payment of those claims.

§ 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

~~(a) Based on where the related cost is incurred, each town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or supervisory union shall receive a special education expenditures reimbursement grant each school year.~~

~~(b) The amount of a school district's or supervisory union's special education expenditures reimbursement shall be equal to the total of its special education expenditures multiplied by the reimbursement rate for that year.~~

~~(c) As used in this subchapter:~~

~~(1) Special education expenditures are allowable expenditures for special education, as defined by rule of the State Board, less the following:~~

~~(A) revenue from federal aid for special education;~~

~~(B) mainstream service costs, as defined in subdivision 2961(c)(1) of this title;~~

~~(C) extraordinary special education expenditures, as defined in section 2962 of this title;~~

~~(D) any transportation expenses already reimbursed;~~

~~(E) special education costs for a student eligible for aid under section 2963a of this title; and~~

~~(F) other State funds used for special education costs as defined by the State Board by rule.~~

~~(2) The State Board shall define allowable expenditures under this subsection. Allowable expenditures shall include any expenditures required under federal law.~~

~~(3) "Special education expenditures reimbursement rate" means a percentage of special education expenditures that is calculated to achieve the 60 percent share required by subsection 2967(b) of this title. [Repealed.]~~

§ 2963a. ~~EXCEPTIONAL CIRCUMSTANCES~~

~~(a) In lieu of reimbursement under section 2963 of this title, the Secretary shall reimburse a school district or supervisory union for 80 percent of the costs not eligible for reimbursement under section 2962 of this title for each student causing the school district or supervisory union to be eligible for extraordinary services reimbursement pursuant to that section. However, in order for a school district or supervisory union to be eligible for reimbursement under this section, the total costs of the school district or supervisory union eligible for extraordinary services reimbursement must equal or exceed 15 percent of the total costs eligible for State assistance under sections 2961, 2962, and 2963 of this title.~~

~~(b) An eligible school district or supervisory union may apply to the Secretary to receive reimbursement under this section. The Secretary shall award reimbursement to a school district or supervisory union under this section if the Secretary makes a determination that the school district or supervisory union considered all the cost effective and appropriate available alternatives for placement and programs for students before incurring these costs. A decision of the Secretary shall be final. [Repealed.]~~

§ 2964. ~~SERVICE PLAN~~

~~(a) As a condition of receiving assistance under this subchapter, a supervisory union shall file a service plan with the Secretary annually on or before October 15. The service plan shall contain the anticipated special~~

~~education expenditures for the following school year for the supervisory union and its member districts. The plan shall be in a form prescribed by the Secretary and shall include information on services planned and anticipated expenditures.~~

~~(b) If a supervisory union fails to file a service plan by October 15, the Secretary may withhold any funds due the supervisory union and its member districts under this title until a service plan is filed and accepted by the Secretary as properly completed. [Repealed.]~~

* * *

§ 2967. AID PROJECTION; STATE SHARE

(a) On or before December 15, the Secretary shall publish an estimate, by supervisory union and its member districts ~~to the extent they anticipate~~ of their anticipated reimbursable 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.

(b) ~~The total expenditures made by the State in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education expenditures of funds that are not derived from federal sources. Special~~ As used in this section, special education expenditures shall include:

(1) costs eligible for grants and reimbursements under ~~sections 2961 through 2963a~~ section 2962 of this title;

(2) costs for services for persons who are visually impaired and persons who are deaf and hard of hearing;

(3) costs for the interdisciplinary team program;

(4) costs for regional specialists in multiple disabilities;

(5) funds expended for training and programs to meet the needs of students with emotional or behavioral problems under subsection 2969(c) of this title; and

(6) funds expended for training under subsection 2969(d) of this title.

§ 2968. ~~REPORTS~~

~~(a) On or before November 15, March 15, and August 1 of each school year, each supervisory union and its member districts to the extent they incur reimbursable expenditures under this chapter shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total expenditures for special education actually incurred during the preceding period, and shall describe revenues derived from different funding sources, including federal assistance, State assistance under this chapter, and local effort.~~

~~(b) If a supervisory union or its member districts that have incurred reimbursable expenditures under this chapter fail to file a complete report by August 1, until the properly completed August 1 report is filed and accepted by the Secretary, the Secretary may withhold any funds due the supervisory union or school district under this title and shall subtract \$100.00 per business day~~

~~from funds due to the supervisory union or school district under this title for that fiscal year. The Secretary may waive the \$100.00 penalty required under this subsection upon appeal by the supervisory union or school district. The Secretary shall establish procedures for administration of this subsection.~~

~~(e) The Secretary shall review and monitor the reports received pursuant to subsection (a) of this section as well as the service plans received pursuant to section 2964 of this title, and shall assist supervisory unions and school districts to complete and submit these documents in a timely and accurate fashion.~~

~~(d) Special education receipts and expenditures shall be included within the audits required of a supervisory union and its member districts that have incurred reimbursable expenditures under this chapter pursuant to section 323 of this title. [Repealed.]~~

§ 2969. PAYMENTS

~~(a)(1) On or before August 15, December 15, and April 15 of each fiscal year, the State Treasurer shall withdraw from the Education Fund, based on a warrant issued by the Commissioner of Finance and Management, and shall forward to each supervisory union and its member districts to the extent they anticipate reimbursable expenditures under this chapter, the amount of State assistance estimated in accordance with State Board rules to be necessary to fund sections 2961 through 2963a of this title in the current fiscal period. The State Board shall by rule ensure that the amount of such assistance shall be~~

~~adjusted to compensate for any overpayments or underpayments determined, after review and acceptance of the reports submitted under section 2968 of this title, to have been made in previous periods. Notwithstanding this subsection, failure to submit the reports within the timelines established by subsection 2968(a) of this title shall result in the withholding of any payments until the report is filed one-third of the educational support grant due to the supervisory union under section 2961 of this title for that fiscal year.~~

(2) On or before November 15, January 15, April 15, and August 1 of each school year, each supervisory union, to the extent it incurs extraordinary expenditures under section 2962 of this title, shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total extraordinary expenditures actually incurred during the reporting period.

(3) On or before December 15, February 15, May 15, and September 15 of each school year, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each supervisory union the amount of extraordinary reimbursement incurred by the supervisory union under section 2962 of this title that is unreimbursed and determined by the Agency of Education to be payable to the supervisory union.

(b) [Repealed.]

(c) For the purpose of meeting the needs of students with emotional or behavioral problems, each fiscal year the Secretary shall use for training,

program development, and building school and regional capacity, up to one percent of the State funds appropriated under this subchapter.

(d) For the training of teachers, administrators, and other personnel in the identification and evaluation of, and provision of ~~education~~ educational services to children who require educational supports, each fiscal year the Secretary shall use up to 0.75 percent of the State funds appropriated under this subchapter. In order to set priorities for the use of these funds, the Secretary shall identify effective practices and areas of critical need. The Secretary may expend up to five percent of these funds for statewide training and shall distribute the remaining funds to school districts or supervisory unions.

(e) School districts and supervisory unions that apply for funds under this section must submit a plan for training that will result in lasting changes in their school systems and give assurances that at least 50 percent of the costs of training, including in-kind costs, will be assumed by the applicant. The Secretary shall establish written procedures and criteria for the award of such funds. In addition, the Secretary may identify schools most in need of training assistance and may pay for 100 percent of the assistance to the supervisory union or school district for these schools to fund the provision of training assistance for these schools.

* * *

§ 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

(a) Annually, the Secretary shall report to the State Board regarding:

(1) ~~special education expenditures by supervisory unions~~ the total amount of educational support grants made to supervisory unions under section 2961 of this title;

(2) ~~the rate of growth or decrease in special education costs, including the identity of high and low spending supervisory unions~~ 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;

(6) the status of the ~~education~~ educational support systems in supervisory unions; and

(7) a statewide summary of the special education student count, including:

(A) the percentage of the total average daily membership represented by special education students statewide and by supervisory union;

(B) the percentage of special education students by disability category; and

(C) the percentage of special education students served by public schools within the supervisory union, by day placement, and by residential placement.

~~(b) The Secretary's report shall include the following data for both high- and low-spending supervisory unions:~~

~~(1) each supervisory union's special education staff to child count ratios as compared to the State average, including a breakdown of ratios by staffing categories;~~

~~(2) each supervisory union's percentage of students in day programs and residential placements as compared to the State average of students in those placements and information about the categories of disabilities for the students in such placements;~~

~~(3) whether the supervisory union was in compliance with section 2901 of this title;~~

~~(4) any unusual community characteristics in each supervisory union relevant to special education placements;~~

~~(5) a review of high- and low-spending supervisory unions' special education student count patterns over time;~~

~~(6) a review of the supervisory union's compliance with federal and State requirements to provide a free, appropriate public education to eligible students; and~~

~~(7) any other factors affecting its spending.~~

~~(e) The Secretary shall review low-spending supervisory unions to determine the reasons for their spending patterns and whether those~~

~~supervisory unions used cost effective strategies appropriate to replicate in other supervisory unions.~~

~~(d) For the purposes of this section, a “high spending supervisory union” is a supervisory union that, in the previous school year, spent at least 20 percent more than the statewide average of special education eligible costs per average daily membership. Also for the purposes of this section, a “low spending supervisory union” is a supervisory union that, in the previous school year, spent no more than 80 percent of the statewide average of special education eligible costs per average daily membership.~~

~~(e) The Secretary and Agency staff shall assist the high spending supervisory unions, that have been identified in subsection (a) of this section and have not presented an explanation for their spending that is satisfactory to the Secretary, to identify reasonable alternatives and to develop a remediation plan. Development of the remediation plan shall include an on-site review. The supervisory union shall have two years to make progress on the remediation plan. At the conclusion of the two years or earlier, the supervisory union shall report its progress on the remediation plan.~~

~~(f) Within 30 days of receipt of the supervisory union’s report of progress, the Secretary shall notify the supervisory union that its progress is either satisfactory or not satisfactory.~~

~~(1) If the supervisory union fails to make satisfactory progress, the Secretary shall notify the supervisory union that, in the ensuing school year,~~

~~the Secretary shall withhold 10 percent of the supervisory union's special education expenditures reimbursement pending satisfactory compliance with the plan.~~

~~(2) If the supervisory union fails to make satisfactory progress after the first year of withholding, 10 percent shall be withheld in each subsequent year pending satisfactory compliance with the plan; provided, however, before funds are withheld in any year under this subdivision (f)(2), the supervisory union shall explain to the State Board either the reasons the supervisory union believes it made satisfactory progress on the remediation plan or the reasons it failed to do so. The State Board's decision whether to withhold funds under this subdivision shall be final.~~

~~(3) If the supervisory union makes satisfactory progress under any subdivision of this subsection, the Secretary shall release to the supervisory union any special education expenditures reimbursement withheld for the prior fiscal year only.~~

~~(g) Within 10 days after receiving the Secretary's notice under subdivision (f)(1) of this section, the supervisory union may challenge the Secretary's decision by filing a written objection to the State Board outlining the reasons the supervisory union believes it made satisfactory progress on the remediation plan. The Secretary may file a written response within 10 days after the supervisory union's objection is filed. The State Board may give the supervisory union and the Secretary an opportunity to be heard. The State~~

~~Board's decision shall be final. The State shall withhold no portion of the supervisory union's reimbursement before the State Board issues its decision under this subsection.~~

~~(h) Nothing in this section shall prevent a supervisory union from seeking and receiving the technical assistance of Agency staff to reduce its special education spending.~~

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL
ASSISTANCE

The Secretary may use up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in ~~subsection 2967(b) of this title~~ State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature. ~~These funds shall not be used for exceptional circumstances that are funded under section 2963a of this title.~~ The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

* * * Technical and Conforming Changes * * *

Sec. 5. 16 V.S.A. § 826 is amended to read:

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

* * *

(c) Excess special education costs incurred by a ~~district~~ supervisory union in providing special education services to a student beyond those covered by

tuition may be charged to the student's supervisory union for the district of residence. However, only actual costs or actual proportionate costs attributable to the student may be charged.

* * *

Sec. 6. 16 V.S.A. § 2958 is amended to read:

§ 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL
PLACEMENTS

(a) A ~~school district~~ supervisory union shall notify the parents and the Secretary when it believes residential placement is a possible option for inclusion in a child's individualized education program.

* * *

Sec. 7. 16 V.S.A. § 2973 is amended to read:

§ 2973. INDEPENDENT SCHOOL TUITION RATES

(a) The Secretary shall establish minimum standards of services for students receiving special education 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~~ supervisory unions 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.

(b) Neither ~~school districts~~ a supervisory union nor any State agency shall pay rates for tuition, room, and board, for students receiving special education

in independent schools outside Vermont that are in excess of allowable costs approved by the authorized body in the state in which the independent school is located, except in exceptional circumstances or for a child who needs exceptional services, as approved by the Secretary.

(c) The State Board is authorized to enter into interstate compacts with other states to regulate rates for tuition, room, and board for students receiving special education in independent schools.

Sec. 8. 16 V.S.A. § 4002 is amended to read:

§ 4002. PAYMENT; ALLOCATION

(a) State and federal funds appropriated for services delivered by the supervisory union and payable through the Agency shall be paid to the order of the supervisory union and administered in accordance with the plan adopted under subdivision 261a(4) of this title. Funding for special education services under section 2969 of this title shall be paid to the ~~districts and~~ supervisory unions in accordance with that section.

(b) The Secretary shall notify the superintendent or chief executive officer of each supervisory union in writing of federal or State funds disbursed to member school districts.

* * * Census-based Funding Advisory Group * * *

Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

(a) Creation. There is created the Census-based Funding Advisory Group to consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.

(b) Membership. The Advisory Group shall be composed of the following 18 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-National Education Association or designee;

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

(7) three representatives of the Agency of Education selected by the Secretary, one with management responsibility for special education practices,

one with financial responsibility, and one with special education program responsibility;

(8) one member selected by the Vermont Superintendents Association;

(9) one member selected by the Vermont Principals' Association;

(10) two members selected by the Vermont Council of Special

Education Administrators;

(11) one member selected by the Vermont-National Education

Association who is a special education teacher;

(12) two members selected by the Vermont Association of School

Business Officials;

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

Project; and

(14) 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.

(c) Powers and duties. The Advisory Group shall:

(1) advise the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;

(2) advise the Agency of Education and supervisory unions on the implementation of this act;

(3) recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act; and

(4) consider the State's special education maintenance of fiscal support requirements under federal law and supervisory unions' maintenance of effort requirements under federal law and recommend to the General Assembly and the Agency of Education options that may allow State and local special education spending in a manner that complies with these requirements while containing costs.

(d) Assistance. The Advisory Group shall have the administrative, technical, and legal assistance of the Agency of Education.

(e) Meetings.

(1) The Secretary of Education shall call the first meeting of the Advisory Group to occur on or before September 30, 2018.

(2) The Advisory Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Advisory Group shall cease to exist on June 30, 2020.

(f) Reports. On or before January 15, 2019, the Advisory Group shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and recommendations on the development of proposed rules to implement this act and any recommendations for any amendments to legislation. On or before January 15, 2020, the

Advisory Group shall submit a supplemental written report to the House and Senate Committees on Education and the State Board of Education with a status of implementation under this act and any recommendations for any amendments to legislation.

(g) Reimbursement. Members of the Advisory Group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than 16 meetings.

(h) Appropriation. Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$7,200.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for the purposes set forth in this section.

* * * Report on Methods to Further the Quality and Equity of Educational
Outcomes for Students * * *

Sec. 10. REPEAL

Sec. 35 of 2017 Acts and Resolves No. 49 is repealed.

Sec. 11. REPORT ON METHODS TO FURTHER THE QUALITY AND
EQUITY OF EDUCATIONAL OUTCOMES FOR STUDENTS

(a) The Agency of Education, in consultation with the Secretary of Human Services, the Vermont Superintendents Association, the Vermont School

Boards Association, and the Vermont-National Education Association, shall consider and make recommendations on the following:

(1) Methods, other than the use of per pupil weighting factors, that would further the quality and equity of educational outcomes for students.

(2) The criteria used for determining weighted long-term membership of a school district under 16 V.S.A. § 4010, including each of the following:

(A) The current weighting factors and any supporting evidence or basis in the historical record for these factors.

(B) The relationship between each of the current weighting factors and the quality and equity of educational outcomes for students.

(C) Whether any of the weighting factors, including the weighting factors for students from economically deprived backgrounds and for students for whom English is not the primary language, should be modified, and if so, how the weighting factors should be modified and if the modification would further the quality and equity of educational outcomes for students.

(D) Whether to add any weighting factors, including a school district population density factor and a factor for students who attend regional career technical education centers, and if so, why the weighting factor should be added and if the weighting factor would further the quality and equity of educational outcomes for students. In considering whether to recommend the addition of a school district population density factor, the Agency of Education shall consider the practices of other states, information from the National

Conference of State Legislatures, and research conducted by higher education institutions working on identifying rural or urban education financing factors.

(3) The criteria to be applied by the State Board of Education in its rulemaking process for increasing the amount of educational support grants paid by the State to supervisory unions in order to provide additional financial support to supervisory unions with relatively high costs due to the number of students who require additional support or the nature of the services required. The criteria shall include the qualification requirements for the adjustment and the manner in which the adjustment should be applied. In making this recommendation, the Agency of Education shall consider the report entitled “Study of Vermont State Funding for Special Education” issued in December 2017 by the University of Vermont Department of Education and Social Services.

(b) On or before March 15, 2019, the Agency of Education shall submit a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance with its findings and any recommendations.

(c) The Agency of Education shall have the technical assistance of the Joint Fiscal Office and the Office of Legislative Council.

(d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$300,000.00 is appropriated for fiscal year 2018 from the Education Fund to the Agency of Education to provide funding for the purposes set forth

in this section. The Agency of Education shall contract with a contractor with expertise in Vermont's education funding system to assist the Agency in producing the study required by this section. Any application of funds for the purpose of administrative overhead shall be capped at ten percent of the total sum allocated pursuant to this subsection.

* * * Training and Technical Assistance on the Delivery of Special
Education Services * * *

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE
DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018-2019, 2019-2020, and 2020-2021 school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled "Expanding and Strengthening Best-Practice Supports for Students who Struggle" delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 and 2021 the amount of

\$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, and 2021 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

* * * Agency of Education; Staffing * * *

Sec. 13. AGENCY OF EDUCATION; STAFFING

The following positions are created in the Agency of Education: one full-time, exempt legal counsel specializing in special education law and two full-time, classified positions specializing in special education programming.
There is appropriated to the Agency of Education from the General Fund for fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating expenses.

* * * Extraordinary Services Reimbursement * * *

Sec. 14. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union

school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.

(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to ~~90~~ 95 percent of its extraordinary special education expenditures.

(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.

Sec. 15. 16 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

As used in this chapter:

* * *

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, career technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is

paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental ~~fund raising~~ fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under chapter 101 of this title.

(A) [Repealed.]

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

* * *

(v) Spending attributable to the district’s share of special education spending ~~in excess of \$50,000.00~~ that is not reimbursed as an extraordinary reimbursement under section 2962 of this title for any ~~one~~ student in the fiscal year occurring two years prior.

* * *

* * * Rulemaking * * *

Sec. 16. RULEMAKING

The State Board of Education shall adopt such rules as are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules, and the State Board shall take into consideration the weighting study report required under Sec. 11 of this act. The State Board rules shall include rules that:

(1) define the term “educational support grant adjustment” as used in the amendment to 16 V.S.A. § 2961 in Sec. 4 of this act;

(2) establish a “uniform base amount,” as that term is used in the amendment to 16 V.S.A. § 2961 in Sec. 4 of this act, that shall apply to all supervisory unions for fiscal year 2025; and

(3) for fiscal years 2022, 2023, and 2024, establish “base amounts,” as that term is used in the amendment to 16 V.S.A. § 2961 in Sec. 4 of this act, to move gradually supervisory unions’ fiscal year 2021 base amounts to the fiscal year 2025 uniform base amount.

* * * Transition * * *

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year 2021.

(b) On or before November 1, 2019, a supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union’s projected fiscal year 2021 extraordinary special education reimbursement under Sec. 4 of this act.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

Sec. 18. ALLOWABLE SPECIAL EDUCATION COSTS

(a) Allowable special education costs shall include salaries and benefits of licensed special education teachers, including vocational special needs teachers and instructional aides for the time they carry out special education responsibilities.

(1) The allowable cost that a local education agency may claim includes a school period or service block during which the staff member identified in this subsection is providing special education services to a group of eight or fewer students, and not less than 25 percent of the students are receiving the special education services, in accordance with their individualized education programs.

(2) In addition to the time for carrying out special education responsibilities, a local education agency may claim up to 20 percent of special education staff members' time, if that staff spends the additional time performing consultation to assist with the development of and providing instructional services required by:

(A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973, as amended; or

(B) a plan for students who require additional assistance in order to succeed in the general education environment.

(b) This section is repealed on July 1, 2020.

* * * Effective Dates * * *

Sec. 19. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2020:

(1) Sec. 4 (amendment to 16 V.S.A. chapter 101);

(2) Sec. 17 (transition).

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

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

(2) Sec. 15 (amendment to 16 V.S.A. § 4001).

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