

1 TO THE HONORABLE SENATE:

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 Senate
6 propose to the House that the bill be amended by striking out all after the
7 enacting clause and inserting in lieu thereof the following:

8 * * * Findings * * *

9 Sec. 1. FINDINGS

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

17 (b) In Act 148, the General Assembly also directed the Agency of
18 Education to contract for a study of special education funding and practice and
19 to recommend a funding model for Vermont designed to provide incentives for
20 desirable practices and stimulate innovation in the delivery of services. The
21 General Assembly required that the study consider a census-based model of

1 funding. The Agency of Education contracted with the University of Vermont
2 and State Agricultural College, and the report of its Department of Education
3 and Social Services entitled “Study of Vermont State Funding for Special
4 Education” was issued in December 2017 (Funding Report).

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

8 (1) ensure core instruction meets most needs of most students;

9 (2) provide additional instructional time outside core subjects to students
10 who struggle, rather than providing interventions instead of core instruction;

11 (3) ensure students who struggle receive all instruction from highly
12 skilled teachers;

13 (4) create or strengthen a systems-wide approach to supporting positive
14 student behaviors based on expert support; and

15 (5) provide specialized instruction from skilled and trained experts to
16 students with more intensive needs.

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

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

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

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

6 (4) discourages cost containment; and

7 (5) is unpredictable and lacks transparency.

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

18 (f) The General Assembly finds that:

19 (1) Students who require additional support would be better served if
20 supervisory unions adopted the best practices recommended in the Delivery of

1 Services Report. In this act, a “student who requires additional support” means
2 a student who:

3 (A) is on an individualized education program under the Individuals
4 with Disabilities Education Act, 20 U.S.C. chapter 33;

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

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

11 (D) is an English language learner; or

12 (E) is a nonreader.

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

18 (3) The census-based model of funding for students who require
19 additional support would enable supervisory unions to adopt the best practices
20 recommended in the Delivery of Services Report, largely due to the flexibility

1 in how the funds could be used by supervisory unions and the alignment with
2 the policy priorities.

3 (g) The General Assembly recognizes that changing the models for
4 delivery of services and funding for students who require additional support is
5 a significant change for school systems and their constituencies, and that they
6 will require time and assistance in making necessary adjustments.

7 * * * Goals * * *

8 Sec. 2. GOALS

9 (a) By enacting this legislation, the General Assembly intends to enhance
10 the effectiveness, availability, and equity of services provided to all students
11 who require additional support in Vermont's school districts.

12 (b)(1) To support the enhanced delivery of these services, the State funding
13 model for special education shall change for all supervisory unions in fiscal
14 year 2021, for school year 2020-2021, from a reimbursement model to a
15 census-based model, which will provide more flexibility in how the funding
16 can be used, is aligned with the State's policy priorities of serving students
17 who require additional support across the general and special education
18 service-delivery systems, and will simplify administration.

19 (2) The General Assembly recognizes that a student on an
20 individualized education program under the Individuals with Disabilities
21 Education Act, 20 U.S.C. chapter 33, is entitled, under federal law, to a free

1 and appropriate public education in the least restrictive environment in
2 accordance with that program. The changes to State funding for special
3 education and the delivery of special education services as envisioned under
4 this act are intended to facilitate the exercise of this entitlement.

5 (c) The General Assembly recognizes that it might be appropriate and
6 equitable to provide a higher amount of census-based funding to supervisory
7 unions that have relatively higher costs in supporting students who require
8 additional support, but does not have sufficient information on which to base
9 this determination. Therefore, this act directs the Agency of Education to
10 make a recommendation to the General Assembly on whether the amount of
11 the census grant should be increased for supervisory unions that have relatively
12 higher costs in supporting students who require additional support, and if so,
13 the criteria for qualification for the adjustment and the manner in which the
14 adjustment should be applied. The General Assembly intends to reconsider
15 this matter after receiving this recommendation and before the census-based
16 model is implemented.

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

1 Sec. 3. 16 V.S.A. § 2901 is amended to read:

2 § 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL

3 EDUCATION ENVIRONMENT

4 (a) ~~It is the policy of the State that each~~ Each local school district shall
5 develop and maintain, in consultation with parents, a comprehensive system of
6 education that ~~will~~ is designed to result, to the extent appropriate, in all
7 students succeeding in the general education environment. A comprehensive
8 system of education includes a full range of services and accommodations that
9 are needed by students in the district. These services could include a separate
10 alternative program if the district finds that some of its students could be better
11 served in an environment outside the classroom, or if the district finds that
12 separate placement is the best way to provide services to a student who is
13 disrupting the class or having difficulty learning in a traditional school setting
14 for educational, emotional, or personal reasons and thereby impairing the
15 ability of the classroom teacher to provide quality high-quality services to that
16 student or to other students. This chapter does not replace or expand
17 entitlements created by federal law, nor is it the intent of this chapter to create
18 a higher standard for maintaining a student in the general classroom than the
19 standard created in the following federal laws: 20 U.S.C. § 1401 et seq.
20 chapter 33, Individuals with Disabilities Education Act; 29 U.S.C. § 794,

1 Section 504 of the Rehabilitation Act of 1973; and 42 U.S.C. § 12101 et seq.
2 chapter 126, Americans with Disabilities Act.

3 (b) [Repealed.]

4 (c) No individual entitlement or private right of action is created by this
5 section.

6 Sec. 4. 16 V.S.A. § 2902 is amended to read:

7 § 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL
8 SUPPORT TEAM

9 (a) Within each school district's comprehensive system of educational
10 services, each public school shall develop and maintain a tiered system of
11 academic and behavioral supports for the purpose of providing all students
12 with the opportunity to succeed or to be challenged in the general education
13 environment. For each school it maintains, a school district board shall assign
14 responsibility for developing and maintaining the tiered system of supports
15 either to the superintendent pursuant to a contract entered into under section
16 267 of this title or to the school principal. The school shall provide all students
17 a full and fair opportunity to access the system of supports and achieve
18 educational success. The tiered system of supports shall, at a minimum,
19 include an educational support team, instructional and behavioral
20 interventions, and accommodations that are available as needed for any student
21 who requires support beyond what can be provided in the general education

1 classroom, and may include intensive, individualized interventions for any
2 student requiring a higher level of support.

3 (b) The tiered system of supports shall:

4 (1) be aligned as appropriate with the general education curriculum;

5 (2) be designed to enhance the ability of the general education system to
6 meet the needs of all students;

7 (3) be designed to provide necessary supports promptly, regardless of an
8 individual student's eligibility for categorical programs;

9 (4) seek to identify and respond to students in need of support for at-risk
10 behaviors and to students in need of specialized, individualized behavior
11 supports; ~~and~~

12 (5) provide all students with a continuum of evidence-based and
13 research-based behavior positive behavioral practices that teach and encourage
14 prosocial skills and behaviors schoolwide promote social and emotional
15 learning, including trauma-sensitive programming, that are both school-wide
16 and focused on specific students or groups of students;

17 (6) promote collaboration with families, community supports, and the
18 system of health and human services; and

19 (7) provide professional development, as needed, to support all staff in
20 full implementation of the multi-tiered system of support.

1 (c) The educational support team for each public school in the district shall
2 be composed of staff from a variety of teaching and support positions and
3 shall:

4 (1) Determine which enrolled students require additional assistance to
5 be successful in school or to complete secondary school based on indicators set
6 forth in guidelines developed by the Secretary, such as academic progress,
7 attendance, behavior, or poverty. The educational support team shall pay
8 particular attention to students during times of academic or personal transition.

9 (2) Identify the classroom accommodations, remedial services, and other
10 supports that have been provided to the identified student.

11 (3) Assist teachers to plan for and provide services and accommodations
12 to students in need of classroom supports or enrichment activities.

13 (4) Develop an individualized strategy, in collaboration with the
14 student's parents or legal guardian whenever possible, to assist the identified
15 student to succeed in school and to complete his or her secondary education.

16 (5) Maintain a written record of its actions.

17 ~~(6) Report no less than annually to the Secretary, in a form the Secretary~~
18 ~~prescribes, on the ways in which the educational support system has addressed~~
19 ~~the needs of students who require additional assistance in order to succeed in~~
20 ~~school or to complete secondary school and on the additional financial costs of~~
21 ~~complying with this subsection (c).~~

1 (d) No individual entitlement or private right of action is created by this
2 section.

3 (e) The Secretary shall establish guidelines for teachers and administrators
4 in following federal laws relating to provision of services for children with
5 disabilities and the implementation of this section. The Secretary shall develop
6 and provide to supervisory unions information to share with parents of children
7 suspected of having a disability that describes the differences between the
8 tiered system of academic and behavioral supports required under this section,
9 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the
10 Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, including
11 how and when school staff and parents of children having a suspected
12 disability may request interventions and services under those entitlements.

13 (f) It is the intent of the General Assembly that a gifted and talented student
14 shall be able to take advantage of services that an educational support team can
15 provide. It is not the intent of the General Assembly that funding under
16 chapter 101 of this title shall be available for a gifted and talented student
17 unless the student has been otherwise determined to be a student for whom
18 funding under that chapter is available.

19 (g) The tiered system of academic and behavioral supports required under
20 this section shall not be used by a school district to deny a timely initial
21 comprehensive special education evaluation for children suspected of having a

1 disability. The Agency of Education shall adopt policies and procedures to
2 ensure that a school district’s evaluation of a child suspected of having a
3 disability is not denied because of implementation of the tiered system of
4 academic and behavioral supports. The policies and procedures shall include:

5 (1) the definition of what level of progress is sufficient for a child to
6 stop receiving instructional services and supports through the tiered system of
7 academic and behavioral supports;

8 (2) guidance on how long children are to be served in each tier; and

9 (3) guidance on how a child’s progress is to be measured.

10 * * * Census-based Funding Model; Amendment of Special

11 Education Laws * * *

12 Sec. 5. 16 V.S.A. chapter 101 is amended to read:

13 CHAPTER 101. SPECIAL EDUCATION

14 Subchapter 1. General Provisions

15 § 2941. POLICY AND PURPOSE

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

1 education services and supports in accordance with individualized education
2 programs necessary to meet the needs of children with disabilities.

3 * * *

4 Subchapter 2. Aid for Special Education and Support Services

5 § 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ EDUCATIONAL
6 SUPPORT GRANT

7 (a) ~~Each supervisory union shall be eligible to receive a standard~~
8 ~~mainstream block grant each school year. The mainstream block grant shall be~~
9 ~~equal to the supervisory union's mainstream salary standard multiplied by~~
10 ~~60 percent.~~

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

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

17 (1) ~~“Mainstream salary standard” means:~~

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

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

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

11 ~~(d) If in any fiscal year, a supervisory union in which a school is~~
12 ~~maintained does not expend an amount equal to its mainstream salary standard~~
13 ~~on special education expenditures, the supervisory union may expend the~~
14 ~~balance, including the matching funds, to provide support and remedial~~
15 ~~services pursuant to section 2902 or 2903 of this title. A supervisory union~~
16 ~~choosing to expend funds in this way shall submit a report describing the~~
17 ~~services provided and their costs with the final financial report submitted under~~
18 ~~section 2968 of this title.~~

19 As used in this section:

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

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

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

8 (4) “Uniform base amount” means an amount determined by:

9 (A) dividing an amount:

10 (i) equal to the average State appropriation for fiscal years 2018,
11 2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard
12 mainstream block grants), 2963 (special education expenditures
13 reimbursement), and 2963a (exceptional circumstances); and

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

18 (B) the statewide average daily membership for prekindergarten
19 through grade 12 for the 2019–2020 school year.

20 (b) The State commits to satisfying its special education maintenance of
21 fiscal support requirement under 34 C.F.R. § 300.163(a).

1 (c) Each supervisory union shall receive a census grant each fiscal year to
2 support the provision of special education services to students on an
3 individualized education program under the Individuals with Disabilities
4 Education Act, 20 U.S.C. chapter 33. Supervisory unions shall use this
5 funding and other available sources of funding to provide special education
6 services to students in accordance with their individualized education programs
7 as mandated under federal law. A supervisory union may use census grant
8 funds to support the delivery of the supervisory union’s comprehensive system
9 of educational services under sections 2901 and 2902 of this title, but shall not
10 use census grant funds in a manner that abrogates its responsibility to provide
11 special education services to students in accordance with their individualized
12 education programs as mandated under federal law.

13 (d)(1)(A) For fiscal year 2021, the amount of the census grant for a
14 supervisory union shall be:

15 (i) the average amount it received for fiscal years 2017, 2018, and
16 2019 from the State for special education under sections 2961 (standard
17 mainstream block grants), 2963 (special education expenditures
18 reimbursement), and 2963a (exceptional circumstances) of this title;
19 increased by

20 (ii) the annual change in the National Income and Product
21 Accounts (NIPA) Implicit Price Deflator for State and Local Government

1 Consumption Expenditures and Gross Investment as reported by the
2 U.S. Department of Commerce, Bureau of Economic Analysis.

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

7 (2) For fiscal year 2025 and subsequent fiscal years, the amount of the
8 census grant for a supervisory union shall be the uniform base amount
9 multiplied by the supervisory union’s long-term membership.

10 (3) For fiscal years 2022, 2023, and 2024, the amount of the census
11 grant for a supervisory union shall be determined by multiplying the
12 supervisory union’s long-term membership by a base amount established under
13 this subdivision. The base amounts for each supervisory union for fiscal years
14 2022, 2023, and 2024 shall move gradually the supervisory union’s fiscal year
15 2021 base amount to the fiscal year 2025 uniform base amount by pro rating
16 the change between the supervisory union’s fiscal year 2021 base amount and
17 the fiscal year 2025 uniform base amount over this three-fiscal-year period.

18 § 2962. EXTRAORDINARY ~~SERVICES~~ SPECIAL EDUCATION

19 REIMBURSEMENT

20 (a) ~~Except as otherwise provided in this subchapter, extraordinary services~~
21 ~~reimbursement shall be payable, based on where the related cost is incurred, to~~

1 ~~a town school district, city school district, union school district, unified union~~
2 ~~school district, incorporated school district, the member school districts of an~~
3 ~~interstate school district, and unorganized town or gore or to a supervisory~~
4 ~~union.~~

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

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

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

18 (2) As used in this subchapter, “extraordinary expenditures” means a
19 supervisory union’s allowable special education expenditures that for any one
20 child in a fiscal year exceed \$60,000.00, increased annually by the annual
21 change in the National Income and Product Accounts (NIPA) Implicit Price

1 Deflator for State and Local Government Consumption Expenditures and
2 Gross Investment as reported by the U.S. Department of Commerce, Bureau of
3 Economic Analysis.

4 (3) The State Board of Education shall define allowable special
5 education expenditures that shall include any expenditures required under
6 federal law in order to implement fully individual education programs under
7 the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, and any
8 costs of mediation conducted by a mediator who is approved by the Secretary.

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

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

14 (1) an amount equal to its special education expenditures in that fiscal
15 year for that child that exceed the extraordinary expenditures threshold amount
16 under subdivision (a)(2) of this section (excess expenditures) multiplied by
17 95 percent; plus

18 (2) an amount equal to the lesser of:

19 (A) the amount of its excess expenditures; or

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

1 (ii) the base amount of the census grant received by the
2 supervisory union under subsection 2961(d) of this title for that fiscal year;
3 multiplied by

4 (iii) 60 percent.

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

9 (e) Under section 2973 of this title, a supervisory union, in its role as the
10 local education agency, may place a student with an individualized education
11 plan under the Individuals with Disabilities Education Act, 20 U.S.C. chapter
12 33, with certain approved independent schools that accept public tuition. If the
13 approved independent school is entitled to special education cost
14 reimbursement under that section, it may bill the supervisory union for excess
15 special education costs incurred by the independent school in providing special
16 education services to that student beyond those covered by general tuition. If
17 those costs for that student exceed the extraordinary expenditures' threshold as
18 defined in subdivision (a)(2) of this section, the supervisory union shall be
19 entitled to extraordinary reimbursement under this section for that student as if
20 it incurred those costs directly.

1 § 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

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

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

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

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

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

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

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

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

19 ~~(E) special education costs for a student eligible for aid under section~~
20 ~~2963a of this title; and~~

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

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

6 ~~(3) “Special education expenditures reimbursement rate” means a~~
7 ~~percentage of special education expenditures that is calculated to achieve the~~
8 ~~60 percent share required by subsection 2967(b) of this title. [Repealed.]~~

9 § 2963a. ~~EXCEPTIONAL CIRCUMSTANCES~~

10 ~~(a) In lieu of reimbursement under section 2963 of this title, the Secretary~~
11 ~~shall reimburse a school district or supervisory union for 80 percent of the~~
12 ~~costs not eligible for reimbursement under section 2962 of this title for each~~
13 ~~student causing the school district or supervisory union to be eligible for~~
14 ~~extraordinary services reimbursement pursuant to that section. However, in~~
15 ~~order for a school district or supervisory union to be eligible for reimbursement~~
16 ~~under this section, the total costs of the school district or supervisory union~~
17 ~~eligible for extraordinary services reimbursement must equal or exceed~~
18 ~~15 percent of the total costs eligible for State assistance under sections 2961,~~
19 ~~2962, and 2963 of this title.~~

20 ~~(b) An eligible school district or supervisory union may apply to the~~
21 ~~Secretary to receive reimbursement under this section. The Secretary shall~~

1 ~~award reimbursement to a school district or supervisory union under this~~
2 ~~section if the Secretary makes a determination that the school district or~~
3 ~~supervisory union considered all the cost effective and appropriate available~~
4 ~~alternatives for placement and programs for students before incurring these~~
5 ~~costs. A decision of the Secretary shall be final. [Repealed.]~~

6 § 2964. SERVICE PLAN

7 ~~(a) As a condition of receiving assistance under this subchapter, a~~
8 ~~supervisory union shall file a service plan with the Secretary annually on or~~
9 ~~before October 15. The service plan shall contain the anticipated special~~
10 ~~education expenditures for the following school year for the supervisory union~~
11 ~~and its member districts. The plan shall be in a form prescribed by the~~
12 ~~Secretary and shall include information on services planned and anticipated~~
13 ~~expenditures.~~

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

18 * * *

19 § 2967. AID PROJECTION; STATE SHARE

20 (a) On or before December 15, the Secretary shall publish an estimate, by
21 supervisory union and its member districts to the extent they anticipate

1 ~~reimbursable, of its~~ anticipated special education expenditures under this
2 chapter, ~~of the amount of State assistance necessary to fully fund sections 2961~~
3 ~~through 2963 of this title in~~ for the ensuing school year.

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

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

10 (2) costs for services for persons who are visually impaired; ~~and~~

11 (3) costs for persons who are deaf and hard of or hearing impaired;

12 ~~(3)(4)~~ costs for the interdisciplinary team program;

13 ~~(4) costs for regional specialists in multiple disabilities;~~

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

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

18 § 2968. **REPORTS**

19 ~~(a) On or before November 15, March 15, and August 1 of each school~~
20 ~~year, each supervisory union and its member districts to the extent they incur~~
21 ~~reimbursable expenditures under this chapter shall file a financial report with~~

1 ~~the Secretary in a form prescribed by the Secretary. The report shall describe~~
2 ~~total expenditures for special education actually incurred during the preceding~~
3 ~~period, and shall describe revenues derived from different funding sources,~~
4 ~~including federal assistance, State assistance under this chapter, and local~~
5 ~~effort.~~

6 ~~(b) If a supervisory union or its member districts that have incurred~~
7 ~~reimbursable expenditures under this chapter fail to file a complete report by~~
8 ~~August 1, until the properly completed August 1 report is filed and accepted by~~
9 ~~the Secretary, the Secretary may withhold any funds due the supervisory union~~
10 ~~or school district under this title and shall subtract \$100.00 per business day~~
11 ~~from funds due to the supervisory union or school district under this title for~~
12 ~~that fiscal year. The Secretary may waive the \$100.00 penalty required under~~
13 ~~this subsection upon appeal by the supervisory union or school district. The~~
14 ~~Secretary shall establish procedures for administration of this subsection.~~

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

20 ~~(d) Special education receipts and expenditures shall be included within the~~
21 ~~audits required of a supervisory union and its member districts that have~~

1 ~~incurred reimbursable expenditures under this chapter pursuant to section 323~~
2 ~~of this title. [Repealed.]~~

3 § 2969. PAYMENTS

4 (a)(1) On or before August 15, December 15, and April 15 of each fiscal
5 year, the State Treasurer shall withdraw from the Education Fund, based on a
6 warrant issued by the Commissioner of Finance and Management, and shall
7 forward to each supervisory union ~~and its member districts to the extent they~~
8 ~~anticipate reimbursable expenditures under this chapter, the amount of State~~
9 ~~assistance estimated in accordance with State Board rules to be necessary to~~
10 ~~fund sections 2961 through 2963a of this title in the current fiscal period. The~~
11 ~~State Board shall by rule ensure that the amount of such assistance shall be~~
12 ~~adjusted to compensate for any overpayments or underpayments determined,~~
13 ~~after review and acceptance of the reports submitted under section 2968 of this~~
14 ~~title, to have been made in previous periods. Notwithstanding this subsection,~~
15 ~~failure to submit the reports within the timelines established by subsection~~
16 ~~2968(a) of this title shall result in the withholding of any payments until the~~
17 ~~report is filed~~ one-third of the census grant due to the supervisory union under
18 section 2961 of this title for that fiscal year.

19 (2) On or before November 15, January 15, April 15, and August 1 of
20 each school year, each supervisory union, to the extent it incurs extraordinary
21 expenditures under section 2962 of this title, shall file a financial report with

1 the Secretary in a form prescribed by the Secretary. The report shall describe
2 total extraordinary expenditures actually incurred during the reporting period.

3 (3) On or before December 15, February 15, May 15, and September 15
4 of each school year, based on a warrant issued by the Commissioner of
5 Finance and Management, the State Treasurer shall withdraw from the
6 Education Fund and shall forward to each supervisory union the amount of
7 extraordinary reimbursement incurred by the supervisory union under section
8 2962 of this title that is unreimbursed and determined by the Agency of
9 Education to be payable to the supervisory union.

10 (b) [Repealed.]

11 (c) For the purpose of meeting the needs of students with emotional or
12 behavioral problems, each fiscal year the Secretary shall use for training,
13 program development, and building school and regional capacity, up to one
14 percent of the State funds appropriated under this subchapter.

15 (d) For the training of teachers, administrators, and other personnel in the
16 identification and evaluation of, and provision of ~~education~~ educational
17 services to children who require educational supports, each fiscal year the
18 Secretary shall use up to 0.75 percent of the State funds appropriated under this
19 subchapter. In order to set priorities for the use of these funds, the Secretary
20 shall identify effective practices and areas of critical need. The Secretary may

1 expend up to five percent of these funds for statewide training and shall
2 distribute the remaining funds to school districts or supervisory unions.

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

12 * * *

13 § 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

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

15 (1) ~~special education expenditures by supervisory unions~~ the total
16 amount of census grants made to supervisory unions under section 2961 of this
17 title;

18 (2) ~~the rate of growth or decrease in special education costs, including~~
19 ~~the identity of high and low spending supervisory unions~~ the total amount of
20 extraordinary special education reimbursement made to supervisory unions
21 under section 2962 of this title;

1 (3) results for special education students;

2 (4) the availability of special education staff;

3 (5) the consistency of special education program implementation
4 statewide;

5 (6) the status of ~~the education support systems~~ tiered systems of
6 supports in supervisory unions; and

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~(e) The Secretary shall review low spending supervisory unions to~~
16 ~~determine the reasons for their spending patterns and whether those~~
17 ~~supervisory unions used cost effective strategies appropriate to replicate in~~
18 ~~other supervisory unions.~~

19 ~~(d) For the purposes of this section, a “high spending supervisory union” is~~
20 ~~a supervisory union that, in the previous school year, spent at least 20 percent~~
21 ~~more than the statewide average of special education eligible costs per average~~

1 ~~daily membership. Also for the purposes of this section, a “low spending~~
2 ~~supervisory union” is a supervisory union that, in the previous school year,~~
3 ~~spent no more than 80 percent of the statewide average of special education~~
4 ~~eligible costs per average daily membership.~~

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

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

16 ~~(1) If the supervisory union fails to make satisfactory progress, the~~
17 ~~Secretary shall notify the supervisory union that, in the ensuing school year,~~
18 ~~the Secretary shall withhold 10 percent of the supervisory union’s special~~
19 ~~education expenditures reimbursement pending satisfactory compliance with~~
20 ~~the plan.~~

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

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

13 ~~(g) Within 10 days after receiving the Secretary's notice under subdivision~~
14 ~~(f)(1) of this section, the supervisory union may challenge the Secretary's~~
15 ~~decision by filing a written objection to the State Board outlining the reasons~~
16 ~~the supervisory union believes it made satisfactory progress on the remediation~~
17 ~~plan. The Secretary may file a written response within 10 days after the~~
18 ~~supervisory union's objection is filed. The State Board may give the~~
19 ~~supervisory union and the Secretary an opportunity to be heard. The State~~
20 ~~Board's decision shall be final. The State shall withhold no portion of the~~

1 ~~supervisory union's reimbursement before the State Board issues its decision~~
2 ~~under this subsection.~~

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

6 § 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL
7 ASSISTANCE

8 The Secretary may use up to two percent of the funds appropriated for
9 allowable special education expenditures, as that term is defined in ~~subsection~~
10 ~~2967(b) of this title~~ State Board of Education rules, to directly assist
11 supervisory unions with special education expenditures of an unusual or
12 unexpected nature. ~~These funds shall not be used for exceptional~~
13 ~~circumstances that are funded under section 2963a of this title.~~ The
14 Secretary's decision regarding a supervisory union's eligibility for and amount
15 of assistance shall be final.

16 * * * Technical and Conforming Changes * * *

17 Sec. 6. 16 V.S.A. § 826 is amended to read:

18 § 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

19 * * *

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

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

4 * * *

5 Sec. 7. 16 V.S.A. § 2958 is amended to read:

6 § 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL
7 PLACEMENTS

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

11 * * *

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

13 § 4002. PAYMENT; ALLOCATION

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

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

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

5 Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

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

9 (b) Membership. The Advisory Group shall be composed of the following
10 **11** members:

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

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

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

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

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

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

2 Association or designee;

3 (7) the Secretary of Education or designee;

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

5 Association who is a special education teacher;

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

7 Business Officials;

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

9 Project; and

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

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

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

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

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

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

3 (e) Meetings.

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

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

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

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

10 (f) Reports. On or before January 15, 2019, the Advisory Group shall
11 submit a written report to the House and Senate Committees on Education and
12 the State Board of Education with its findings and recommendations on the
13 development of proposed rules to implement this act and any recommendations
14 for legislation. On or before January 15, 2020, the Advisory Group shall
15 submit a supplemental written report to the House and Senate Committees on
16 Education and the State Board of Education with a status of implementation
17 under this act and any recommendations for legislation.

18 (g) Reimbursement. Members of the Advisory Group who are not
19 employees of the State of Vermont and who are not otherwise compensated or
20 reimbursed for their attendance shall be entitled to per diem compensation and

1 reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than
2 16 meetings.

3 (h) Appropriation. The sum of \$4,000.00 is appropriated for fiscal year
4 2018 from the General Fund to the Agency of Education to provide funding for
5 the purposes set forth in this section.

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

8 Sec. 10. REPEAL

9 2017 Acts and Resolves No. 49, Sec. 35 (education weighting report) is
10 repealed.

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

13 (a) The Agency of Education, in consultation with the Secretary of Human
14 Services, the Vermont Superintendents Association, the Vermont School
15 Boards Association, and the Vermont-National Education Association, shall
16 consider and make recommendations on the following:

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

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

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

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

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

10 (D) Whether to add any weighting factors, including a school district
11 population density factor and a factor for students who attend regional career
12 technical education centers, and if so, why the weighting factor should be
13 added and whether the weighting factor would further the quality and equity of
14 educational outcomes for students. In considering whether to recommend the
15 addition of a school district population density factor, the Agency of Education
16 shall consider the practices of other states, information from the National
17 Conference of State Legislatures, and research conducted by higher education
18 institutions working on identifying rural or urban education financing factors.

19 (3) Whether the census grant, as defined in the amendment to 16 V.S.A.
20 § 2961 in Sec. 5 of this act, should be increased for supervisory unions that
21 have relatively higher costs in supporting students who require additional

1 support, and if so, the criteria for qualification for the adjustment and the
2 manner in which the adjustment should be applied. In making this
3 recommendation, the Agency of Education shall consider the report entitled
4 “Study of Vermont State Funding for Special Education” issued in December
5 2017 by the University of Vermont Department of Education and Social
6 Services.

7 (b) On or before November 1, 2019, the Agency of Education shall submit
8 a written report to the House and Senate Committees on Education, the House
9 Committee on Ways and Means, and the Senate Committee on Finance with its
10 findings and any recommendations.

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

13 (d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the
14 sum of \$300,000.00 is appropriated for fiscal year 2018 from the Education
15 Fund to the Agency of Education to provide funding for the purposes set forth
16 in this section. The Agency of Education shall contract with a contractor with
17 expertise in Vermont’s education funding system to assist the Agency in
18 producing the study required by this section. Any application of funds for the
19 purpose of administrative overhead shall be capped at ten percent of the total
20 sum allocated pursuant to this subsection.

1 fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating
2 expenses.

3 * * * Extraordinary Services Reimbursement * * *

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

5 § 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

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

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

15 (c) As used in this subchapter, “extraordinary special education
16 expenditures” means a school district’s or supervisory union’s allowable
17 expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal
18 year. In this subsection, child means a student with disabilities who is three
19 years of age or older in the current school year. The State Board shall define
20 allowable expenditures that shall include any expenditures required under

1 federal law, and any costs of mediation conducted by a mediator who is
2 approved by the Secretary.

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

4 § 4001. DEFINITIONS

5 As used in this chapter:

6 * * *

7 (6) “Education spending” means the amount of the school district
8 budget, any assessment for a joint contract school, career technical center
9 payments made on behalf of the district under subsection 1561(b) of this title,
10 and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is
11 paid for by the school district, but excluding any portion of the school budget
12 paid for from any other sources such as endowments, parental ~~fund raising~~
13 fundraising, federal funds, nongovernmental grants, or other State funds such
14 as special education funds paid under chapter 101 of this title.

15 (A) [Repealed.]

16 (B) For purposes of calculating excess spending pursuant to
17 32 V.S.A. § 5401(12), “education spending” shall not include:

18 * * *

19 (v) Spending attributable to the district’s share of special
20 education spending ~~in excess of \$50,000.00~~ that is not reimbursed as an

1 extraordinary reimbursement under section 2962 of this title for any one
2 student in the fiscal year occurring two years prior.

3 * * *

4 * * * Rulemaking * * *

5 **Sec. 16. RULEMAKING**

6 The Agency of Education shall recommend to the State Board proposed
7 rules that are necessary to implement this act and, on or before November 1,
8 2019, the State Board of Education shall adopt rules that are necessary to
9 implement this act. The State Board and the Agency of Education shall
10 consult with the Census-based Funding Advisory Group established under
11 Sec. 9 of this act in developing the State Board rules. The State Board rules
12 shall include rules that establish processes for reporting, monitoring, and
13 evaluation designed to ensure:

14 (1) the achievement of the goal under this act of enhancing the
15 effectiveness, availability, and equity of services provided to all students who
16 require additional support in Vermont's school districts; and

17 (2) that supervisory unions are complying with the Individuals with
18 Disabilities Education Act, 20 U.S.C. chapter 33.

1 this subsection is providing special education services to a group of eight or
2 fewer students, and not less than 25 percent of the students are receiving the
3 special education services, in accordance with their individualized education
4 programs.

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

10 (A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973,
11 29 U.S.C. § 794; or

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

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

15 * * * Approved Independent Schools * * *

16 Sec. 19. FINDINGS AND GOALS

17 (a) The General Assembly created the Approved Independent Schools
18 Study Committee in 2017 Acts and Resolves No. 49 to consider and make
19 recommendations on the criteria to be used by the State Board of Education for
20 designation of an “approved” independent school. The Committee was
21 specifically charged to consider and make recommendations on:

1 (b) Approved independent schools.

2 (1) On application, the State Board shall approve an independent school
3 that offers elementary or secondary education if it finds, after opportunity for
4 hearing, that the school provides a minimum course of study pursuant to
5 section 906 of this title and that it substantially complies with all statutory
6 requirements for approved independent schools and the Board’s rules for
7 approved independent schools. An independent school that intends to accept
8 public tuition shall be approved by the State Board only on the condition that
9 the school agrees, notwithstanding any provision of law to the contrary, to
10 enroll any student who requires special education services and who is placed in
11 or referred to the approved independent school as an appropriate placement
12 and least restrictive environment for the student by the student’s individualized
13 education plan team or by the local education agency; provided, however, that
14 this requirement shall not apply to an independent school that limits enrollment
15 to students who are on an individualized education plan or a plan under Section
16 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled
17 pursuant to a written agreement between the local education agency and the
18 school.

19 (2) Except as provided in subdivision (6) of this subsection, the Board’s
20 rules must at minimum require that the school has have the resources required
21 to meet its stated objectives, including financial capacity, faculty who are

1 qualified by training and experience in the areas in which they are assigned,
2 and physical facilities and special services that are in accordance with any
3 State or federal law or regulation.

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

9 * * *

10 (5) The State Board may revoke ~~or~~, suspend, or impose conditions upon
11 the approval of an approved independent school, after having provided an
12 opportunity for a hearing, for substantial failure to comply with the minimum
13 course of study, for failure to demonstrate that the school has the resources
14 required to meet its stated objectives, for failure to comply with statutory
15 requirements or the Board's rules for approved independent schools, or for
16 failure to report under subdivision (4) of this subsection (b). Upon that
17 revocation or suspension, students required to attend school who are enrolled
18 in that school shall become truant unless they enroll in a public school, an
19 approved or recognized independent school, or a home study program.

20 * * *

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

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

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

9 (iii) the school’s failure to maintain required retirement
10 contributions;

11 (iv) the school’s use of designated funds for nondesignated
12 purposes;

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

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

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

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

6 (ii) If the State Board, after having provided the school a
7 reasonable opportunity to respond, does not find that the school has
8 satisfactorily responded or demonstrated its financial capacity, the State Board
9 may establish a review team, that, with the consent of the school, includes a
10 member of the Council of Independent Schools, to:

11 (I) conduct a school visit to assess the school’s financial
12 capacity;

13 (II) obtain from the school such financial documentation as the
14 review team requires to perform its assessment; and

15 (III) submit a report of its findings and recommendations to the
16 State Board.

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

1 who are enrolled pursuant to a written agreement between the LEA and the
2 school.

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

6 (3) An approved independent school is not required to demonstrate that
7 it has the resources to serve every category of special education as defined
8 under State Board of Education rules in order to be approved or retain its
9 approval to receive public funding for general tuition.

10 (4) The terms “special education services,” “LEA,” and “individualized
11 education plan” or “IEP” as used in this section shall have the same meanings
12 as defined by State Board rules.

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

20 (2)(A) The Secretary of Education shall set, after consultation with
21 independent schools in Vermont, and based on the level of services provided

1 by the schools, the maximum rates to be paid by the Agency and supervisory
2 unions or school districts for tuition, room, and board for residential placement
3 of students who require special education services. The amount charged by an
4 independent school for tuition shall reflect the school's actual or anticipated
5 costs of providing special education services to the student and shall not
6 exceed the maximum rates set by the Secretary, provided that the Secretary
7 may permit charges in excess of these maximum rates where the Secretary
8 deems warranted.

9 (B)(i) An approved independent school that enrolls a student under
10 subdivision (a)(1) of this section on a nonresidential basis may bill the
11 responsible LEA for excess special education costs incurred by the
12 independent school in providing special education services beyond those
13 covered by general tuition. Reimbursement of these excess special education
14 costs shall be based on the direct-costs rates approved by the Secretary for
15 services actually provided to the student consistent with the Agency of
16 Education Technical Manual for special education cost accounting. The
17 Agency of Education shall publish specific elements that must be included as
18 part of an independent school's invoice for excess special education costs, and
19 these elements shall be included in the written agreement required under
20 subdivision (c)(2) of this section.

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

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

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

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

4 (3) An approved independent school shall provide such documentation
5 to the Secretary as the Secretary deems necessary in order to ensure that
6 amounts payable under this subsection to the school are reasonable in relation
7 to the special education services provided by the school. The Secretary may
8 withhold, or direct an LEA to withhold, payment under this subsection pending
9 the Secretary’s receipt of required documentation under this subsection, or may
10 withhold, or direct an LEA to withhold, an amount determined by the
11 Secretary as not reasonable in relation to the special education services
12 provided by the school.

13 (c)(1) In order to be approved as an independent school eligible to receive
14 State funding under subdivision (a)(1) of this section, the school shall
15 demonstrate the ability to serve students with disabilities by:

16 (A) demonstrating an understanding of special education
17 requirements, including the:

18 (i) provision of a free and appropriate public education in
19 accordance with federal and State law;

20 (ii) provision of education in the least restrictive environment in
21 accordance with federal and State law;

1 (iii) characteristics and educational needs associated with any of
2 the categories of disability or suspected disability under federal and State
3 law; and

4 (iv) procedural safeguards and parental rights, including discipline
5 procedures, specified in federal and State law;

6 (B) committing to implementing the IEP of an enrolled student with
7 special education needs, providing the required services, and appropriately
8 documenting the services and the student’s progress;

9 (C) subject to subsection (d) of this section, employing or contracting
10 with staff who have the required licensure to provide special education
11 services;

12 (D) agreeing to communicate with the responsible LEA concerning:

13 (i) the development of, and any changes to, the IEP;

14 (ii) services provided under the IEP and recommendations for a
15 change in the services provided;

16 (iii) the student’s progress;

17 (iv) the maintenance of the student’s enrollment in the
18 independent school; and

19 (v) the identification of students with suspected disabilities; and

20 (E) committing to participate in dispute resolution as provided under
21 federal and State law.

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

4 (A) shall enter into a written agreement with the LEA:

5 (i) committing to the requirements under subdivision (1) of this
6 subsection (c); and

7 (ii) if the LEA provides staff or resources to the approved
8 independent school on an interim basis under subsection (d) of this section,
9 setting forth the terms of that arrangement with assistance from the Agency of
10 Education on the development of those terms and on the implementation of the
11 arrangement; and

12 (B) subject to subsection (d) of this section, shall ensure that
13 qualified school personnel attend evaluation and planning meetings and IEP
14 meetings for the student.

15 (d) If an approved independent school enrolls a student under subdivision
16 (a)(1) of this section but does not have the staff or State Board certification to
17 provide special education services in the specific disability category that the
18 student requires, then:

19 (1) The LEA, in consultation with the approved independent school and
20 the Agency of Education, shall determine what special education services and
21 supports the school is able to provide to the student.

1 (2) The LEA shall, on an interim basis and at its cost, provide such
2 additional staff and other resources to the approved independent school as are
3 necessary to support the student until such time as the approved independent
4 school is able to directly provide these services and has the appropriate State
5 Board certification; provided, however, that the school shall have all required
6 staff and resources and the appropriate State Board certification within nine
7 academic months after the date of the student’s initial enrollment.

8 (3) If the school does not have all required staff and resources and the
9 appropriate State Board certification within nine academic months after the
10 date of the student’s initial enrollment as required under subdivision (2) of this
11 subsection (d), then, in the event that the State Board determines that the
12 school has failed to make good faith and reasonable efforts to secure the
13 required staff, resources, and certification, the State Board may take any action
14 that is authorized by section 166 of this title.

15 ~~(b)~~(e) Neither a school districts district nor any State agency shall pay rates
16 for tuition, room, and board; for students receiving special education in
17 independent schools outside Vermont that are in excess of allowable costs
18 approved by the authorized body in the state in which the independent school
19 is located, except in exceptional circumstances or for a child who needs
20 exceptional services, as approved by the Secretary.

