

1 TO THE HOUSE OF REPRESENTATIVES:

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) Membership. The Advisory Group shall be composed of the following
2 14 members:

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

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

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

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

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

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

15 (7) the Secretary of Education or designee;

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

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

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

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

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

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

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

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

16 (h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year
17 2018 from the General Fund to the Agency of Education to provide funding for
18 per diem compensation and reimbursement under subsection (g) of this section.
19 The Agency shall include in its budget request to the General Assembly for
20 each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide

1 funding for per diem compensation and reimbursement under subsection (g) of
2 this section.

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

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

6 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

7 * * *

8 (b) Approved independent schools. On application, the State Board shall
9 approve an independent school that offers elementary or secondary education
10 if it finds, after opportunity for hearing, that the school provides a minimum
11 course of study pursuant to section 906 of this title and that it substantially
12 complies with the Board's rules for approved independent schools Except as
13 provided in subdivision (6) of this subsection, the Board's rules must at
14 minimum require that the school ~~has~~ have the resources required to meet its
15 stated objectives, including financial capacity, faculty who are qualified by
16 training and experience in the areas in which they are assigned, and physical
17 facilities and special services that are in accordance with any State or federal
18 law or regulation. Approval may be granted without State Board evaluation in
19 the case of any school accredited by a private, State, or regional agency
20 recognized by the State Board for accrediting purposes.

21 * * *

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

11 * * *

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

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

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

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

1 (iv) the school’s use of designated funds for nondesignated
2 purposes;

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

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

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

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

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

1 (I) conduct a school visit to assess the school’s financial
2 capacity;

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

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

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

11 (iv) In considering whether an independent school lacks financial
12 capacity to meet its stated objectives during the period of its approved status
13 and what actions the State Board should take if it makes this finding, the State
14 Board may consult with, and draw on the analytical resources of, the Vermont
15 Department of Financial Regulation.

16 (C) Information provided by an independent school under this
17 subsection that is not already in the public domain is exempt from public
18 inspection and copying under the Public Records Act and shall be kept
19 confidential.

20 * * *

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

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

3 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

4 * * *

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

1 as provided in subdivision (6) of this subsection, the Board's rules must at
2 minimum require that the school ~~has~~ have the resources required to meet its
3 stated objectives, including financial capacity, faculty who are qualified by
4 training and experience in the areas in which they are assigned, and physical
5 facilities and special services that are in accordance with any State or federal
6 law or regulation. Approval may be granted without State Board evaluation in
7 the case of any school accredited by a private, State, or regional agency
8 recognized by the State Board for accrediting purposes., provided that the State
9 Board shall determine that the school complies with all student enrollment
10 provisions required by law.

11 * * *

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

14 (a)(1) Notwithstanding any provision of law to the contrary, an approved
15 independent school that accepts public tuition shall enroll any student with an
16 individualized education program who requires special education services and
17 who is placed in the approved independent school as an appropriate placement
18 and least restrictive environment for the student by the student's individualized
19 education program team or by the local education agency (LEA); provided,
20 however, that this requirement shall not apply to an independent school that
21 limits enrollment to students who are on an individualized education program

1 or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794,
2 and who are enrolled pursuant to a written agreement between the LEA and the
3 school.

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

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

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

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

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

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

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

6 (iii) An approved independent school that enrolls a student under
7 subdivision (a)(1) of this section shall provide such documentation to the
8 Secretary as the Secretary deems necessary in order to ensure that amounts
9 payable under this subdivision (B) to the school are reasonable in relation to
10 the special education services provided by the school. The Secretary may
11 withhold, or direct an LEA to withhold, payment under this subdivision
12 pending the Secretary's receipt of required documentation under this
13 subdivision, or may withhold, or direct an LEA to withhold, an amount
14 determined by the Secretary as not reasonable in relation to the special
15 education services provided by the school.

16 (C)(i) The Secretary shall set, after consultation with independent
17 schools in Vermont, the maximum tuition rates to be paid by the Agency and
18 supervisory unions or school districts to independent schools that limit
19 enrollment to students who are on an IEP or a plan under Section 504 of the
20 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to

1 a written agreement between the LEA and the school. The maximum tuition
2 rates shall be based on the level of services provided by the school.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) On or before November 1, 2019, the Vermont Standards Board for
20 Professional Educators shall review its special educator endorsement
21 requirements and initiate rulemaking to update its rules to ensure that these

1 requirements do not serve as a barrier to satisfying statewide demands for
2 licensed special educators.

3 (b) On or before November 1, 2020, the State Board of Education shall
4 review its rules for approving independent schools in specific special education
5 categories and initiate rulemaking to update its rules to simplify and expedite
6 the approval process.

7 * * * Effective Dates * * *

8 Sec. 23. EFFECTIVE DATES

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

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

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

12 (3) Sec. 17 (transition).

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

14 (c) Secs. 20a-21 (approved independent schools) shall take effect on July 1,
15 2023.

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

17

18

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE