

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 229  
3 entitled “An act relating to State Board of Education approval of independent  
4 schools” respectfully reports that it has considered the same and recommends  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

7 Sec. 1. FINDINGS AND GOALS

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

13 (1) the school’s enrollment policy and any limitation on a student’s  
14 ability to enroll;

15 (2) how the school should be required to deliver special education  
16 services and which categories of these services; and

17 (3) the scope and nature of financial information and special education  
18 information that should be required to be reported by the school to the State  
19 Board or Agency of Education.



1 public tuition shall enroll any student requiring special education services who  
2 is placed in or referred to the approved independent school as an appropriate  
3 placement and least restrictive environment for the student by the local  
4 education agency. Except as provided in subdivision (6) of this subsection, the  
5 Board's rules must at minimum require that the school has the resources  
6 required to meet its stated objectives, including financial capacity, faculty who  
7 are qualified by training and experience in the areas in which they are  
8 assigned, and physical facilities and special services that are in accordance  
9 with any State or federal law or regulation. Approval may be granted without  
10 State Board evaluation in the case of any school accredited by a private, State,  
11 or regional agency recognized by the State Board for accrediting purposes,  
12 provided that the State Board shall determine that the school complies with all  
13 student enrollment provisions required by law.

14 \* \* \*

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

1 school who are enrolled in that school shall become truant unless they enroll in  
2 a public school, an approved or recognized independent school, or a home  
3 study program.

4 \* \* \*

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

9 (i) the school's failure to file its federal or State tax returns when  
10 due (after taking into account permissible extension periods);

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

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

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

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

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

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

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

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

15                   (I) conduct a school visit to assess the school’s financial  
16                   capacity;

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

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

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

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

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

14                    \* \* \*

15                    Sec. 3. 16 V.S.A. § 2973 is amended to read:

16                    § 2973. INDEPENDENT ~~SCHOOL TUITION RATES~~ SCHOOLS

17                    (a)(1) Notwithstanding any provision of law to the contrary, an approved  
18                    independent school that accepts public tuition shall enroll any student with an  
19                    individualized education plan requiring special education services who is  
20                    placed in the approved independent school as an appropriate placement and

1 least restrictive environment for the student by the local education agency  
2 (LEA).

3 (2) An approved independent school is not required to demonstrate that  
4 it has the resources to serve every category of special education in order to be  
5 approved or retain its approval to receive tuition under this section.

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

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

16 (2)(A) The Secretary of Education shall set, after consultation with  
17 independent schools in Vermont, the maximum rates to be paid by the Agency  
18 and supervisory unions for tuition, room, and board for residential placement  
19 of students requiring special education services based on the level of special  
20 education services provided by the schools. The amount charged by an  
21 independent school for tuition shall reflect the school’s actual or anticipated

1 costs of providing special education services to the student and shall not  
2 exceed the maximum rates set by the Secretary, provided that the Secretary  
3 may permit charges in excess of these maximum rates where the Secretary  
4 deems warranted.

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

17 (C) In establishing the tuition rates and cost rates for reimbursement  
18 under this subsection, the Secretary shall apply the principle of treating an  
19 approved independent school and a public school with parity in terms of the  
20 amount of State and local contribution to cover the costs of providing special  
21 education services.



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

9           (c)(1) In order to be approved as an independent school eligible to receive  
10           State funding under subsection (b) of this section, the school shall demonstrate  
11           the ability to serve students with disabilities by:

12                   (A) demonstrating an understanding of special education  
13                   requirements, including the:

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

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

18                           (iii) characteristics and educational needs associated with any of  
19                           the disability or suspected disability categories under federal and State  
20                           law; and

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

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

6                    (C) subject to subsection (d) of this section, employing or contracting  
7 with staff with the required licensure to provide special education services;

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

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

10                   (ii) services provided under the IEP and recommendations for a  
11 change in the services provided;

12                   (iii) the student’s progress;

13                   (iv) the maintenance of the student’s enrollment in the  
14 independent school; and

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

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

18                   (2) An approved independent school that enrolls a student requiring  
19 special education services who is placed under subsection (a) of this section:

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

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

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

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

11                  (d) If an approved independent school enrolls a student under subsection  
12                  (a) of this section but does not have the staff or State Board certification to  
13                  provide special education services in the specific disability category required  
14                  by the student, then:

15                   (1) the LEA, in consultation with the approved independent school and  
16                   the Agency of Education, shall determine what special education services and  
17                   supports the school is able to provide to the student; and

18                   (2) the LEA shall, on an interim basis and at its cost, provide such  
19                   additional staff and other resources to the approved independent school as are  
20                   necessary to support the student until such time as the approved independent  
21                   school is able to directly provide these services and has the appropriate State

1 Board certification, provided that the school shall have all required staff and  
2 resources and the appropriate State Board certification within one year after the  
3 date of the student's initial enrollment.

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

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

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on passage.

15

16 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

18

Senator \_\_\_\_\_

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FOR THE COMMITTEE