

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

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

11 § 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL

12 EDUCATION ENVIRONMENT

13 (a) ~~It is the policy of the State that each~~ Each local school district shall  
14 develop and maintain, in consultation with parents, a comprehensive system of  
15 education that ~~will~~ is designed to result, to the extent appropriate, in all  
16 students succeeding in the general education environment. A comprehensive  
17 system of education includes a full range of services and accommodations that  
18 are needed by students in the district. These services could include a separate  
19 alternative program if the district finds that some of its students could be better  
20 served in an environment outside the classroom, or if the district finds that  
21 separate placement is the best way to provide services to a student who is

1 disrupting the class or having difficulty learning in a traditional school setting  
2 for educational, emotional, or personal reasons and thereby impairing the  
3 ability of the classroom teacher to provide quality high-quality services to that  
4 student or to other students. This chapter does not replace or expand  
5 entitlements created by federal law, nor is it the intent of this chapter to create  
6 a higher standard for maintaining a student in the general classroom than the  
7 standard created in the following federal laws: 20 U.S.C. § 1401 et seq.  
8 chapter 33, Individuals with Disabilities Education Act; 29 U.S.C. § 794,  
9 Section 504 of the Rehabilitation Act of 1973; and 42 U.S.C. § 12101 et seq.  
10 chapter 126, Americans with Disabilities Act.

11 (b) [Repealed.]

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

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

15 § 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL

16 SUPPORT TEAM

17 (a) Within each school district's comprehensive system of educational  
18 services, each public school shall develop and maintain a tiered system of  
19 academic and behavioral supports for the purpose of providing all students  
20 with the opportunity to succeed or to be challenged in the general education  
21 environment. For each school it maintains, a school district board shall assign

1 responsibility for developing and maintaining the tiered system of supports  
2 either to the superintendent pursuant to a contract entered into under section  
3 267 of this title or to the school principal. The school shall provide all students  
4 a full and fair opportunity to access the system of supports and achieve  
5 educational success. The tiered system of supports shall, at a minimum,  
6 include an educational support team, instructional and behavioral  
7 interventions, and accommodations that are available as needed for any student  
8 who requires support beyond what can be provided in the general education  
9 classroom; and may include intensive, individualized interventions for any  
10 student requiring a higher level of support.

11 (b) The tiered system of supports shall:

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

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

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

17 (4) seek to identify and respond to students in need of support for at-risk  
18 behaviors and to students in need of specialized, individualized behavior  
19 supports; and

20 (5) provide all students with a continuum of evidence-based and  
21 research-based behavior positive behavioral practices that teach and encourage

1 prosocial skills and behaviors schoolwide promote social and emotional  
2 learning, including trauma-sensitive programming, that are both school-wide  
3 and focused on specific students or groups of students;

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

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

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

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

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

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

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

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

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

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

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

1 (f) It is the intent of the General Assembly that a gifted and talented student  
2 shall be able to take advantage of services that an educational support team can  
3 provide. It is not the intent of the General Assembly that funding under  
4 chapter 101 of this title shall be available for a gifted and talented student  
5 unless the student has been otherwise determined to be a student for whom  
6 funding under that chapter is available.

7 (g) The tiered system of academic and behavioral supports required under  
8 this section shall not be used by a school district to deny a timely initial  
9 comprehensive special education evaluation for children suspected of having a  
10 disability. The Agency of Education shall adopt policies and procedures to  
11 ensure that a school district’s evaluation of a child suspected of having a  
12 disability is not denied because of implementation of the tiered system of  
13 academic and behavioral supports. The policies and procedures shall include:

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

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

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



1 ~~equal to the supervisory union's mainstream salary standard multiplied by~~  
2 ~~60 percent.~~

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

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

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

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

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

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

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

11           As used in this section:

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

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

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

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

1           (A) dividing an amount:

2                   (i) equal to the average State appropriation for fiscal years 2018,  
3                   2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard  
4                   mainstream block grants), 2963 (special education expenditures  
5                   reimbursement), and 2963a (exceptional circumstances); and

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

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

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

14           (c) Each supervisory union shall receive a census grant each fiscal year to  
15           support the provision of special education services to students on an  
16           individualized education program under the Individuals with Disabilities  
17           Education Act, 20 U.S.C. chapter 33. Supervisory unions shall use this  
18           funding and other available sources of funding to provide special education  
19           services to students in accordance with their individualized education programs  
20           as mandated under federal law. A supervisory union may use census grant  
21           funds to support the delivery of the supervisory union’s comprehensive system

1 of educational services under sections 2901 and 2902 of this title, but shall not  
2 use census grant funds in a manner that abrogates its responsibility to provide  
3 special education services to students in accordance with their individualized  
4 education programs as mandated under federal law.

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

7 (i) the average amount it received for fiscal years 2017, 2018, and  
8 2019 from the State for special education under sections 2961 (standard  
9 mainstream block grants), 2963 (special education expenditures  
10 reimbursement), and 2963a (exceptional circumstances) of this title;  
11 increased by

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

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

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

4           (3) For fiscal years 2022, 2023, and 2024, the amount of the census  
5           grant for a supervisory union shall be determined by multiplying the  
6           supervisory union’s long-term membership by a base amount established under  
7           this subdivision. The base amounts for each supervisory union for fiscal years  
8           2022, 2023, and 2024 shall move gradually the supervisory union’s fiscal year  
9           2021 base amount to the fiscal year 2025 uniform base amount by pro rating  
10           the change between the supervisory union’s fiscal year 2021 base amount and  
11           the fiscal year 2025 uniform base amount over this three-fiscal-year period.

12           § 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION

13                           REIMBURSEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

1                    (iii) 60 percent.

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

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

18                    § 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

19                    ~~(a) Based on where the related cost is incurred, each town school district,~~  
20 ~~city school district, union school district, unified union school district,~~  
21 ~~incorporated school district, the member school districts of an interstate school~~

1 ~~district, and unorganized town or gore or supervisory union shall receive a~~  
2 ~~special education expenditures reimbursement grant each school year.~~

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

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

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

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

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

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

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

15 ~~(E) special education costs for a student eligible for aid under section~~  
16 ~~2963a of this title; and~~

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

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

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

4           § 2963a. ~~EXCEPTIONAL CIRCUMSTANCES~~

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

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

1 § 2964. SERVICE PLAN

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

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

13 \* \* \*

14 § 2967. AID PROJECTION; STATE SHARE

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

20 (b) The total expenditures made by the State in any fiscal year pursuant to  
21 this chapter shall be 60 percent of the statewide total special education

1 ~~expenditures of funds that are not derived from federal sources. Special As~~  
2 used in this section, special education expenditures shall include:

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

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

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

7 ~~(3)(4)~~ costs for the interdisciplinary team program;

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

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

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

13 § 2968. **REPORTS**

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

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

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

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

19       § 2969. PAYMENTS

20       (a)(1) On or before August 15, December 15, and April 15 of each fiscal  
21       year, the State Treasurer shall withdraw from the Education Fund, based on a

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

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

19 (3) On or before December 15, February 15, May 15, and September 15  
20 of each school year, based on a warrant issued by the Commissioner of  
21 Finance and Management, the State Treasurer shall withdraw from the

1 Education Fund and shall forward to each supervisory union the amount of  
2 extraordinary reimbursement incurred by the supervisory union under section  
3 2962 of this title that is unreimbursed and determined by the Agency of  
4 Education to be payable to the supervisory union.

5 (b) [Repealed.]

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

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

18 (e) School districts and supervisory unions that apply for funds under this  
19 section must submit a plan for training that will result in lasting changes in  
20 their school systems and give assurances that at least 50 percent of the costs of  
21 training, including in-kind costs, will be assumed by the applicant. The

1 Secretary shall establish written procedures and criteria for the award of such  
2 funds. In addition, the Secretary may identify schools most in need of training  
3 assistance and may pay for 100 percent of the assistance to the supervisory  
4 union or school district for these schools to fund the provision of training  
5 assistance for these schools.

6 \* \* \*

7 § 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

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

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

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

16 (3) results for special education students;

17 (4) the availability of special education staff;

18 (5) the consistency of special education program implementation  
19 statewide;

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

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

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

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

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

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

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

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

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

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

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

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

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

9           ~~(c) The Secretary shall review low spending supervisory unions to~~  
10 ~~determine the reasons for their spending patterns and whether those~~  
11 ~~supervisory unions used cost effective strategies appropriate to replicate in~~  
12 ~~other supervisory unions.~~

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

20           ~~(e) The Secretary and Agency staff shall assist the high spending~~  
21 ~~supervisory unions, that have been identified in subsection (a) of this section~~

1 ~~and have not presented an explanation for their spending that is satisfactory to~~  
2 ~~the Secretary, to identify reasonable alternatives and to develop a remediation~~  
3 ~~plan. Development of the remediation plan shall include an on-site review.~~

4 ~~The supervisory union shall have two years to make progress on the~~  
5 ~~remediation plan. At the conclusion of the two years or earlier, the supervisory~~  
6 ~~union shall report its progress on the remediation plan.~~

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

10 ~~(1) If the supervisory union fails to make satisfactory progress, the~~  
11 ~~Secretary shall notify the supervisory union that, in the ensuing school year,~~  
12 ~~the Secretary shall withhold 10 percent of the supervisory union's special~~  
13 ~~education expenditures reimbursement pending satisfactory compliance with~~  
14 ~~the plan.~~

15 ~~(2) If the supervisory union fails to make satisfactory progress after the~~  
16 ~~first year of withholding, 10 percent shall be withheld in each subsequent year~~  
17 ~~pending satisfactory compliance with the plan; provided, however, before~~  
18 ~~funds are withheld in any year under this subdivision (f)(2), the supervisory~~  
19 ~~union shall explain to the State Board either the reasons the supervisory union~~  
20 ~~believes it made satisfactory progress on the remediation plan or the reasons it~~

1 ~~failed to do so. The State Board's decision whether to withhold funds under~~  
2 ~~this subdivision shall be final.~~

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

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

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

1 § 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL  
2 ASSISTANCE

3 The Secretary may use up to two percent of the funds appropriated for  
4 allowable special education expenditures, as that term is defined in ~~subsection~~  
5 ~~2967(b) of this title~~ State Board of Education rules, to directly assist  
6 supervisory unions with special education expenditures of an unusual or  
7 unexpected nature. ~~These funds shall not be used for exceptional~~  
8 ~~circumstances that are funded under section 2963a of this title.~~ The  
9 Secretary's decision regarding a supervisory union's eligibility for and amount  
10 of assistance shall be final.

11 \* \* \* Technical and Conforming Changes \* \* \*

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

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

14 \* \* \*

15 (c) Excess special education costs incurred by a ~~district~~ supervisory union  
16 in providing special education services to a student beyond those covered by  
17 tuition may be charged to the student's supervisory union for the district of  
18 residence. However, only actual costs or actual proportionate costs attributable  
19 to the student may be charged.

20 \* \* \*

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

2 § 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL  
3 PLACEMENTS

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

7 \* \* \*

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

9 § 4002. PAYMENT; ALLOCATION

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

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

1                   \* \* \* Census-based Funding Advisory Group \* \* \*

2           Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

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

6           (b) Membership. The Advisory Group shall be composed of the following  
7           11 members:

8                   (1) the Executive Director of the Vermont Superintendents Association  
9                   or designee;

10                   (2) the Executive Director of the Vermont School Boards Association or  
11                   designee;

12                   (3) the Executive Director of the Vermont Council of Special Education  
13                   Administrators or designee;

14                   (4) the Executive Director of the Vermont Principals' Association or  
15                   designee;

16                   (5) the Executive Director of the Vermont Independent Schools  
17                   Association or designee;

18                   (6) the Executive Director of the Vermont-National Education  
19                   Association or designee;

20                   (7) the Secretary of Education or designee;

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

2           Association who is a special education teacher;

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

4           Business Officials;

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

6           Project; and

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

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

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

10          for Disability Rights.

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

12           (1) advise the State Board of Education on the development of proposed

13           rules to implement this act prior to the submission of the proposed rules to the

14           Interagency Committee on Administrative Rules;

15           (2) advise the Agency of Education and supervisory unions on the

16           implementation of this act; and

17           (3) recommend to the General Assembly any statutory changes it

18           determines are necessary or advisable to meet the goals of this act.

19          (d) Assistance. The Advisory Group shall have the administrative,

20          technical, and legal assistance of the Agency of Education.

1        (e) Meetings.

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

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

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

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

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

16           (g) Reimbursement. Members of the Advisory Group who are not  
17        employees of the State of Vermont and who are not otherwise compensated or  
18        reimbursed for their attendance shall be entitled to per diem compensation and  
19        reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than  
20        16 meetings.



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

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

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

17           (3) Whether the census grant, as defined in the amendment to 16 V.S.A.  
18           § 2961 in Sec. 5 of this act, should be increased for supervisory unions that  
19           have relatively higher costs in supporting students who require additional  
20           support, and if so, the criteria for qualification for the adjustment and the  
21           manner in which the adjustment should be applied. In making this

1 recommendation, the Agency of Education shall consider the report entitled  
2 “Study of Vermont State Funding for Special Education” issued in December  
3 2017 by the University of Vermont Department of Education and Social  
4 Services.

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

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

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

