

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 the report of its Department of Education and Social Services entitled
3 “Study of Vermont State Funding for Special Education” was issued in
4 December 2017 (Funding Report).

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

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

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

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

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

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

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

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

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

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

6 (4) discourages cost containment; and

7 (5) is unpredictable and lacks transparency.

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

18 (f) The General Assembly finds that:

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

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

3 (A) is on an individualized education program under the Individuals
4 with Disabilities Education Act, 20 U.S.C. § 1401 et seq.;

5 (B) is on a plan under Section 504 of the Rehabilitation Act
6 of 1973; or

7 (C) is not on an individualized education program or Section 504
8 plan but who has a disability or social, emotional, or behavioral needs or is
9 otherwise at risk, or who is an English language learner or nonreader.

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

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

20 (g) The General Assembly recognizes that changing the models for
21 delivery of services and funding for students who require additional support is

1 a significant change for school systems and their constituencies, and that they
2 will require time and assistance in making necessary adjustments.

3 * * * Goals * * *

4 Sec. 2. GOALS

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

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

15 (2) The General Assembly recognizes that a student on an
16 individualized education program under the Individuals with Disabilities
17 Education Act, 20 U.S.C. § 1401 et seq., is entitled, under federal law, to a free
18 and appropriate public education in the least restrictive requirement **in**
19 **accordance with that program.** The changes to State funding for special
20 education and the delivery of special education services as envisioned under
21 this act are intended to facilitate the exercise of this entitlement.

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

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

7 **§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL**

8 **EDUCATION ENVIRONMENT**

9 **(a) ~~It is the policy of the State that each~~ Each local school district shall**
10 **develop and maintain, in consultation with parents, a comprehensive system of**
11 **education that ~~will~~ is designed to result, to the extent appropriate, in all**
12 **students succeeding in the general education environment. A comprehensive**
13 **system of education includes a full range of services and accommodations that**
14 **are needed by students in the district. These services could include a separate**
15 **alternative program if the district finds that some of its students could be better**
16 **served in an environment outside the classroom, or if the district finds that**
17 **separate placement is the best way to provide services to a student who is**
18 **disrupting the class or having difficulty learning in a traditional school setting**
19 **for educational, emotional, or personal reasons and thereby impairing the**
20 **ability of the classroom teacher to provide quality services to that student or to**
21 **other students. This chapter does not replace or expand entitlements created by**

1 federal law, nor is it the intent of this chapter to create a higher standard for
2 maintaining a student in the general classroom than the standard created in the
3 following federal laws: 20 U.S.C. § 1401 et seq., Individuals with Disabilities
4 Education Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act; and
5 42 U.S.C. § 12101 et seq., Americans with Disabilities Act.

6 (b) [Repealed.]

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

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

10 § 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL
11 SUPPORT TEAM

12 (a) Within each school district's comprehensive system of educational
13 services, each public school shall develop and maintain a tiered system of
14 academic and behavioral supports for the purpose of providing all students
15 with the opportunity to succeed or to be challenged in the general education
16 environment. For each school it maintains, a school district board shall assign
17 responsibility for developing and maintaining the tiered system of supports
18 either to the superintendent pursuant to a contract entered into under section
19 267 of this title or to the school principal. The school shall provide all students
20 a full and fair opportunity to access the system of supports and achieve
21 educational success. The tiered system of supports shall, at a minimum,

1 include an educational support team, instructional and behavioral
2 interventions, and accommodations that are available as needed for any student
3 who requires support beyond what can be provided in the general education
4 classroom, and may include intensive, individualized interventions for any
5 student requiring a higher level of support.

6 (b) The tiered system of supports shall:

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

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

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

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

15 (5) provide all students with a continuum of evidence-based and
16 research-based behavior practices that teach and encourage prosocial skills and
17 behaviors schoolwide; and

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

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

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

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

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

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

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

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

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

3 (e) The Secretary shall establish guidelines for teachers and administrators
4 in following federal laws relating to provision of services for children with
5 disabilities and the implementation of this section. The Secretary shall develop
6 and provide to supervisory unions information to share with parents of children
7 suspected of having a disability that describes the differences between the
8 tiered system of academic and behavioral supports required under this section,
9 Section 504 of the Rehabilitation Act of 1973, and the Individuals with
10 Disabilities Education Act, 20 U.S.C. § 1401 et seq., including how and when
11 school staff and parents of children having a suspected disability may request
12 interventions and services under those entitlements.

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

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

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

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

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

10 (3) guidance on how a child's progress is to be measured.

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

12 Education Laws * * *

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

14 CHAPTER 101. SPECIAL EDUCATION

15 Subchapter 1. General Provisions

16 § 2941. POLICY AND PURPOSE

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

1 ~~to ensure the provision of the special educational facilities and instruction~~
2 ~~services and supports in accordance with individualized education programs~~
3 ~~necessary to meet the needs of children with disabilities.~~

4 * * *

5 Subchapter 2. Aid for Special Education and Support Services

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

8 (a) ~~Each supervisory union shall be eligible to receive a standard~~
9 ~~mainstream block grant each school year. The mainstream block grant shall be~~
10 ~~equal to the supervisory union's mainstream salary standard multiplied by~~
11 ~~60 percent.~~

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

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

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

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

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

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

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

19 As used in this section:

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

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

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

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

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

15 (c) Each supervisory union shall receive a census grant each fiscal year to
16 support the provision of special education services to students on an
17 individualized education program under the Individuals with Disabilities
18 Education Act, 20 U.S.C. § 1401 et seq. Supervisory unions shall use this
19 funding and other available sources of funding to provide special education
20 services to students in accordance with their individualized education programs
21 as mandated under federal law. A supervisory union may use census grant

1 funds to support the delivery of the supervisory union’s comprehensive system
2 of educational services under sections 2901 and 2902 of this title, but shall not
3 use census grant funds in a manner that abrogates its responsibility to provide
4 special education services to students in accordance with their individualized
5 education programs as mandated under federal law. The State Board of
6 Education shall adopt rules that require supervisory unions to demonstrate
7 compliance with this requirement.

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

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

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

19 (B) The amount determined under subdivision (A) of this subdivision
20 (1) shall be divided by the supervisory union’s long-term membership, to

1 determine the base amount of the census grant, which is the amount of the
2 census grant calculated on a per student basis.

3 (2) For fiscal year 2025 and subsequent fiscal years, the amount of the
4 census grant for a supervisory union shall be the uniform base amount
5 multiplied by the supervisory union’s long-term membership. The uniform
6 base amount shall be determined by State Board of Education rules.

7 (3) For fiscal years 2022, 2023, and 2024, the amount of the census
8 grant for a supervisory union shall be determined by multiplying the
9 supervisory union’s long-term membership by a base amount established under
10 State Board of Education rules. The base amount established under State
11 Board of Education rules shall be designed to move gradually a supervisory
12 union’s fiscal year 2021 base amount to the fiscal year 2025 uniform base
13 amount established by the State Board under subdivision (2) of this subsection.

14 (4) For fiscal year 2022 and subsequent fiscal years, the amount of the
15 census grant shall be increased by the supplemental adjustment for supervisory
16 unions that qualify for the adjustment.

17 § 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION

18 REIMBURSEMENT

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

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

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

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

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

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

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

3 (3) The State Board of Education shall define allowable special
4 education expenditures that shall include any expenditures required under
5 federal law in order to implement fully individual education programs under
6 the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq. and
7 any costs of mediation conducted by a mediator who is approved by the
8 Secretary.

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

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

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

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

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

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

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

4 (iii) 60 percent.

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

9 (e) A supervisory union shall be entitled to extraordinary reimbursement if
10 it incurs extraordinary expenditures in a fiscal year for a child placed with an
11 approved independent school under section 2973 of this title either directly or
12 through reimbursement payments made to the approved independent school
13 under that section.

14 § 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

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

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

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

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

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

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

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

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

13 ~~(E) special education costs for a student eligible for aid under section~~
14 ~~2963a of this title; and~~

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

17 ~~(2) The State Board shall define allowable expenditures under this~~
18 ~~subsection. Allowable expenditures shall include any expenditures required~~
19 ~~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 ~~the extent they anticipate reimbursable~~ of their anticipated
17 special education expenditures under this chapter, ~~of the amount of State~~
18 ~~assistance necessary to fully fund sections 2961 through 2963 of this title in for~~
19 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~~ sections 2961 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 hearing;**

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 10 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 Secretary of Education or designee;

19 (7) one member selected by the Vermont-National Education
20 Association who is a special education teacher;

1 (8) one member selected by the Vermont Association of School

2 Business Officials;

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

4 Project; and

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

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

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

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

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

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

19 (e) Meetings.

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

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

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

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

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

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

19 (h) Appropriation. The sum of \$4,000.00 is appropriated for fiscal year
20 2018 from the General Fund to the Agency of Education to provide funding for
21 the purposes set forth in this section.

1 how the weighting factors should be modified and if the modification would
2 further the quality and equity of educational outcomes for students.

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

12 (3) The definition of the term “supplemental adjustment” as used in the
13 amendment to 16 V.S.A. § 2961 in Sec. 5 of this act. In making this
14 recommendation, the Agency of Education shall consider the report entitled
15 “Study of Vermont State Funding for Special Education” issued in December
16 2017 by the University of Vermont Department of Education and Social
17 Services.

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

1 embedding the following best practices for the delivery of special education
2 services:

3 (1) ensuring core instruction meets most needs of most students;

4 (2) providing additional instructional time outside core subjects to
5 students who require additional support, rather than providing interventions
6 instead of core instruction;

7 (3) ensuring students who require additional support receive all
8 instruction from highly skilled teachers;

9 (4) creating or strengthen a systems-wide approach to supporting
10 positive student behaviors based on expert support; and

11 (5) providing specialized instruction from skilled and trained experts to
12 students with more intensive needs.

13 (b) The sum of \$200,000.00 is appropriated from federal funds that are
14 available under the Individuals with Disabilities Education Act for fiscal
15 year 2019 to the Agency of Education, which the Agency shall administer in
16 accordance with this section. The Agency shall include in its budget request to
17 the General Assembly for each of fiscal years 2020 and 2021 the amount of
18 \$200,000.00 from federal funds that are available under the Individuals with
19 Disabilities Education Act for administration in accordance with this section.

20 (c) The Agency of Education shall present to the General Assembly on or
21 before December 15 in 2019, 2020, and 2021 a report describing what changes

1 supervisory unions have made to expand and improve their delivery of services
2 to students who require additional supports and describing the associated
3 delivery challenges. The Agency shall share each report with all supervisory
4 unions.

5 * * * Agency of Education; Staffing * * *

6 Sec. 13. AGENCY OF EDUCATION; STAFFING

7 The following positions are created in the Agency of Education: one full-
8 time, exempt legal counsel specializing in special education law and two full-
9 time, classified positions specializing in special education programming.

10 There is appropriated to the Agency of Education from the General Fund for
11 fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating
12 expenses.

13 * * * Extraordinary Services Reimbursement * * *

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

15 § 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

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

1 (b) The amount of extraordinary services reimbursement provided to each
2 district or supervisory union shall be equal to ~~90~~ 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 ~~\$50,000.00~~ \$60,000.00 for a fiscal
7 year. In this subsection, child means a student with disabilities who is three
8 years of age or older in the current school year. The State Board shall define
9 allowable expenditures that shall include any expenditures required under
10 federal law, and any costs of mediation conducted by a mediator who is
11 approved by the Secretary.

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

13 § 4001. DEFINITIONS

14 As used in this chapter:

15 * * *

16 (6) “Education spending” means the amount of the school district
17 budget, any assessment for a joint contract school, career technical center
18 payments made on behalf of the district under subsection 1561(b) of this title,
19 and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is
20 paid for by the school district, but excluding any portion of the school budget
21 paid for from any other sources such as endowments, parental ~~fund-raising~~

1 fundraising, federal funds, nongovernmental grants, or other State funds such
2 as special education funds paid under chapter 101 of this title.

3 (A) [Repealed.]

4 (B) For purposes of calculating excess spending pursuant to
5 32 V.S.A. § 5401(12), “education spending” shall not include:

6 * * *

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

11 * * *

12 * * * Rulemaking * * *

13 Sec. 16. RULEMAKING

14 The Agency of Education shall recommend to the State Board proposed
15 rules that are necessary to implement this act and, on or before July 1, 2020,
16 the State Board of Education shall adopt rules that are necessary to implement
17 this act. The State Board and the Agency of Education shall consult with the
18 Census-based Funding Advisory Group established under Sec. 9 of this act in
19 developing the State Board rules. The State Board rules shall include rules
20 that:

1 (1) Define the term “supplemental adjustment” as used in the
2 amendment to 16 V.S.A. § 2961 in Sec. 5 of this act. The purpose of this
3 adjustment is to increase the amount of the census grant provided to
4 supervisory unions that have relatively higher costs in supporting students who
5 require additional support due to the number of these students or the nature of
6 the services required. In defining this term, the State Board shall establish the
7 criteria for qualification for the adjustment and the manner in which the
8 adjustment shall be applied. These criteria shall be designed to mitigate the
9 risk that supervisory unions, in order to qualify for the adjustment, overidentify
10 students who require additional support or overstate the severity of the support
11 required. In defining the term “supplemental adjustment,” the State Board
12 shall consider the Agency’s report on methods to further the quality and equity
13 of educational outcomes for students required under Sec. 11 of this act and the
14 report entitled “Study of Vermont State Funding for Special Education” issued
15 in December 2017 by the Department of Education and Social Services of the
16 University of Vermont and State Agricultural College.

17 (2) Establish a “uniform base amount,” as that term is used in the
18 amendment to 16 V.S.A. § 2961 in Sec. 5 of this act, or the calculation
19 methodology for determining the uniform base amount, that shall apply to all
20 supervisory unions for fiscal year 2025 and subsequent fiscal years. The
21 amount of the census grant for a supervisory union for these fiscal years is

1 determined by multiplying the uniform base amount by the supervisory union's
2 long-term membership. In determining the uniform base amount or the
3 calculation methodology for determining that amount, the State Board of
4 Education shall:

5 (A) divide

6 (i) an amount

7 (I) equal to the average State appropriation for fiscal years
8 2018, 2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard
9 mainstream block grants), 2963 (special education expenditures
10 reimbursement), and 2963a (exceptional circumstances);

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

15 (ii) the statewide average daily membership for prekindergarten
16 through grade 12 for the 2019–2020 school year, resulting in the unadjusted
17 uniform base amount; and

18 (B) reduce the unadjusted uniform base amount by an amount
19 necessary to accommodate State funding of the supplemental adjustment for
20 those supervisory unions that qualify for the adjustment, in a manner that
21 ensures that the State complies with its commitment to satisfy its special

1 education maintenance of fiscal support requirement under federal law but
2 does not exceed the appropriation amount that is necessary for the State to
3 satisfy this requirement.

4 (3)(A) For fiscal years 2022, 2023, and 2024, establish “base amounts,”
5 as that term is used in the amendment to 16 V.S.A. § 2961 in Sec. 5 of this act,
6 or the calculation methodology for determining these base amounts, to move
7 gradually supervisory unions’ fiscal year 2021 base amounts to the fiscal year
8 2025 uniform base amount. The State Board may establish base amounts for
9 these fiscal years that pro rate the change between the supervisory unions’
10 fiscal year 2021 base amounts and the fiscal year 2025 uniform base amount,
11 or may otherwise establish base amounts for these fiscal years that the State
12 Board determines are fair and equitable in moving supervisory unions to the
13 uniform base amount.

14 (B) For fiscal years 2022, 2023, and 2024, the supplemental
15 adjustment shall be applied to the base amounts for those supervisory unions
16 that qualify for the adjustment. Before that adjustment is applied, all base
17 amounts shall be reduced by an amount necessary to accommodate State
18 funding of the adjustment in a manner that ensures that the State complies with
19 its commitment to satisfy its special education maintenance of fiscal support
20 requirement under federal law but does not exceed that requirement.

1 (4) Establish processes for reporting, monitoring, and evaluation
2 designed to ensure:

3 (A) the achievement of the goal of enhancing the effectiveness,
4 availability, and equity of services provided to all students who require
5 additional support in Vermont’s school districts; and

6 (B) that supervisory unions are complying with the Individuals with
7 Disabilities Education Act, 20 U.S.C. § 1401 et seq.

8 * * * Transition * * *

9 Sec. 17. TRANSITION

10 (a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a
11 supervisory union to submit a service plan to the Secretary of Education, a
12 supervisory union shall not be required to submit a service plan for fiscal year
13 2021.

14 (b) On or before November 1, 2019, a supervisory union shall submit to the
15 Secretary such information as required by the Secretary to estimate the
16 supervisory union’s projected fiscal year 2021 extraordinary special education
17 reimbursement under Sec. 5 of this act.

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

1 Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION

2 COSTS

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

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

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

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

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

1 the schools that they, their parents, and their local education agency deem
2 appropriate to them.

3 (d) This act completes that work and provides the direction necessary for
4 the State Board of Education to develop further the amendments to its rules for
5 approval of independent schools.

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

7 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

8 * * *

9 (b) Approved independent schools.

10 (1) On application, the State Board shall approve an independent school
11 that offers elementary or secondary education if it finds, after opportunity for
12 hearing, that the school provides a minimum course of study pursuant to
13 section 906 of this title and that it substantially complies with all statutory
14 requirements for approved independent schools and the Board's rules for
15 approved independent schools. An independent school that intends to accept
16 public tuition shall be approved by the State Board only on the condition that
17 the school agrees, notwithstanding any provision of law to the contrary, to
18 enroll any student who requires special education services and who is placed in
19 or referred to the approved independent school as an appropriate placement
20 and least restrictive environment for the student by the student's individualized
21 education plan team or by the local education agency; provided, however, that

1 this requirement shall not apply to an independent school that limits enrollment
2 to students who are on an individualized education plan or a plan under Section
3 504 of the Rehabilitation Act of 1973 and who are enrolled pursuant to a
4 written agreement between the local education agency and the school.

5 (2) Except as provided in subdivision (6) of this subsection, the Board's
6 rules must at minimum require that the school has the resources required to
7 meet its stated objectives, including financial capacity, faculty who are
8 qualified by training and experience in the areas in which they are assigned,
9 and physical facilities and special services that are in accordance with any
10 State or federal law or regulation.

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

16 * * *

17 (5) The State Board may revoke, ~~or suspend,~~ or impose conditions upon
18 the approval of an approved independent school, after having provided an
19 opportunity for a hearing, for substantial failure to comply with the minimum
20 course of study, for failure to demonstrate that the school has the resources
21 required to meet its stated objectives, for failure to comply with statutory

1 requirements or the Board’s rules for approved independent schools, or for
2 failure to report under subdivision (4) of this subsection (b). Upon that
3 revocation or suspension, students required to attend school who are enrolled
4 in that school shall become truant unless they enroll in a public school, an
5 approved or recognized independent school, or a home study program.

6 * * *

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

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

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

15 (iii) the school’s failure to maintain required retirement
16 contributions;

17 (iv) the school’s use of designated funds for nondesignated
18 purposes;

19 (v) the school’s inability to fully comply with the financial terms
20 of its secured installment debt obligations over a period of two consecutive

1 months, including the school’s failure to make interest or principal payments
2 as they are due or to maintain any required financial ratios;

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

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

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

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

17 (I) conduct a school visit to assess the school’s financial
18 capacity;

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

1 is placed in the approved independent school as an appropriate placement and
2 least restrictive environment for the student by the student’s individualized
3 education plan team or by the local education agency (LEA); provided,
4 however, that this requirement shall not apply to an independent school that
5 limits enrollment to students who are on an individualized education plan or a
6 plan under Section 504 of the Rehabilitation Act of 1973 and who are enrolled
7 pursuant to a written agreement between the LEA and the school.

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

11 (3) An approved independent school is not required to demonstrate that
12 it has the resources to serve every category of special education in order to be
13 approved or retain its approval to receive public funding for general tuition.

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

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

1 independent schools as to the need for certain special education services in
2 Vermont.

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

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

1 part of an independent school's invoice for excess special education costs, and
2 these elements shall be included in the written agreement required under
3 subdivision (c)(2) of this section.

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

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

16 (ii) The tuition rates established by the Secretary under this
17 subdivision (C) shall be no more than the costs that are reasonably related to
18 the level of services provided by the school and shall be set forth on a form
19 prescribed for that purpose by the Secretary of Education. The Secretary shall
20 determine the relationship between costs and the level of services by using

1 generally accepted accounting principles, such as those set forth in the
2 Handbook (II) for Financial Accounting of Vermont School Systems.

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

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

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

18 (A) demonstrating an understanding of special education
19 requirements, including the:

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

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

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

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

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

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

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

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

16 (ii) services provided under the IEP and recommendations for a
17 change in the services provided;

18 (iii) the student’s progress;

19 (iv) the maintenance of the student’s enrollment in the
20 independent school; and

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

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

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

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

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

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

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

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

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

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

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

18 ~~(b)~~(e) Neither a school districts district nor any State agency shall pay rates
19 for tuition, room, and board; for students receiving special education in
20 independent schools outside Vermont that are in excess of allowable costs
21 approved by the authorized body in the state in which the independent school

1 is located, except in exceptional circumstances or for a child who needs
2 exceptional services, as approved by the Secretary.

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

6 * * * Effective Dates * * *

7 Sec. 22. EFFECTIVE DATES

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

9 (1) Sec. 5 (amendment to 16 V.S.A. chapter 101); and

10 (2) Sec. 17 (transition).

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

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

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

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

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1 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE