

**Report of  
Approved Independent Schools  
Study Committee**

**December 2017**

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## I. SUMMARY

In November 2015, the Vermont State Board of Education proposed a series of amendments to the existing 2200 Series of its Rules and Practices, those governing the approval of independent schools in Vermont. Whatever their actual merits or demerits, the amendments proved controversial, both within the independent school community and within the administration of then-Governor Shumlin.

As a result, the administrative process of approval was slowed substantially.

In January 2017, the Senate Committee on Education began taking testimony on the proposed amendments to the 2200 Series, with an eye toward facilitating agreement between the State Board (and representatives of public schools) and representatives of the independent school community. After several months of committee testimony and consultations between the State Board and the independent school representatives, it became clear that agreement would remain elusive. As a result, the Senate Committee on Education drafted and passed legislative language designed to clarify the intent of the General Assembly with regard to the issues and proposed amendments at issue. The House agreed to that language, and it was incorporated into 2013 Acts and Resolves No. 49, commonly called Act 49.

Accordingly, Act 49 charged this study committee to seek a way forward on three areas of concern: whether receiving State tuition dollars should be conditioned on open enrollment; how independent schools should deliver special education services, and in which categories; and what forms of financial disclosure should be mandatory for approved independent schools.

Section 42(f) of Act 49 makes clear that it is the intention of the Vermont General Assembly to resolve these contentious issues in as direct a manner as possible. It states, in part, “It is the intent of the General Assembly to resolve the issues raised by the State Board of Education’s proposed amendments to the 2200 Series of its Rules and Practices initiated by the State Board on November 13, 2015 (Rules for Approval of Independent Schools) after taking into account the report of the Committee required under subsection (e) of this section.” The committee’s charge also specifically mentions that this report should include “recommendations for any amendments to legislation.”

To this end, and at the discretion of the Chair, the study committee spent a good deal of its time working through bullet-point presentations by several of its participants, and then attempting to turn those presentations—or the elements of them that seemed to elicit the most mutual agreement—into workable drafts of legislative language.

While in this way the committee was able to make headway on language setting forth strengthened requirements for financial disclosure, it was unable to reach a similar level of agreement and progress toward language on the delivery of special education services by approved independent schools in Vermont.

The study committee did agree, unanimously, that Vermont students with disabilities should be free to attend the schools that they, their parents, and their local education agency deem appropriate to them.

In large part, the remaining disagreements involved implementation. Our charge as a committee was to deliberate not over whether approved independent schools should deliver special education services but how they might best do so. The representatives of the approved independent schools on the committee made it clear from the start that they wished to deliver those services, but in order to ensure the viability of these schools, any additional financial and administrative costs incurred by the schools in delivering those services would need to be addressed adequately. Their worry was that the extension of a general special education mandate might put smaller independent schools out of business if not properly backed with public resources. In addition, the representatives of the approved independent schools emphasized the importance of being part of the student placement discussion with the local education agency. Other committee members worried that an extensive provision of public resources to approved independent schools might adversely affect the public school system in general, and that independent schools do not currently have in place the cost containment measures similar to those found in public schools. The study committee agreed that concerns around cost containment need to be central to working through the implementation challenges.

The committee as a whole had several other worries: that there may be an insufficient supply of qualified special education teachers and administrators to staff approved independent schools; that the Agency of Education would be unable to process the increased number of independent school applications for special education qualification; and that any intervention into the current system of delivery might inadvertently run afoul of complex federal requirements surrounding the delivery of special education services.

Section V of this report includes an appendix containing the draft legislative language relating to financial capability. It does not at this point represent a consensus product of the study committee, but rather an indication of where our efforts to reach consensus broke off.

## II. THE COMMITTEE

The Approved Independent Schools Study Committee was established by 2017 Acts and Resolves No. 49, Sec. 42. *See* Appendix A.

The Committee consisted of ten members:

- (1) One current member of the Senate appointed by the Committee on Committees: Senator Philip Baruth, *Chair*.
- (2) One current member of the House of Representatives appointed by the Speaker of the House: Representative Emily Long.
- (3) The Chair of the State Board of Education or designee: Bonnie Johnson-Aten.
- (4) The Secretary of Education or designee: Rebecca Holcombe.
- (5) The Executive Director of the Vermont Superintendents Association or designee: Jeffrey Francis.

(6) The Executive Director of the Vermont School Boards Association or designee: Nicole Mace.

(7) The Executive Director of the Vermont Independent Schools Association or designee: Seth Bongartz.

(8) Two members of the Vermont Council of Independent Schools, chosen by the Chair of the Vermont Council of Independent Schools: Michael Livingston and Liz Shayne.

(9) The Executive Director of the Vermont Council of Special Education Administrators or designee: Jo-Anne Unruh.

The Committee was staffed by: Jim DesMarais, Office of Legislative Council, and Suzanne Sprague, Agency of Education.

### **III. THE COMMITTEE'S CHARGE**

2017 Acts and Resolves No. 49, Sec. 42 created the Approved Independent Schools Study Committee “to consider and make recommendations on the criteria to be used by the State Board of Education for designation as an ‘approved’ independent school.” Act 49 provided that the Committee should “consider and make recommendations on the criteria to be used by the State Board of Education for designation as an ‘approved’ independent school, including the following criteria:

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

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

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

Act 49 directed the State Board of Education to suspend further development of the amendments to its rules for approval of independent schools, pending receipt of the report of the Committee, and to develop further these amendments after considering the Committee’s report.

The Committee was authorized to meet up to seven times and directed to file a report of its recommendations and any proposals for legislative action with the House and Senate Committees on Education and the State Board of Education.

### **IV. MEETINGS AND WITNESSES**

The Committee met seven times in 2017: May 30, July 19, August 14, October 13, November 3, November 17, and December 15.

The following witnesses appeared before the Committee:

Molly Bachman, General Counsel, Agency of Education

Susan Marks, Agency of Education Special Education Consultant, WestEd National Center for Systemic Improvement

Karen Price, Vermont Family Network

Erin Maguire, Council of Administrators of Special Education

Rick Gordon, Compass School

Randi Kulis, Bennington-Rutland Supervisory Union

Jim DesMarais, Legislative Counsel, Office of Legislative Council

In addition to witness testimony, members of the Committee also made presentations to the Committee.

## **V. APPENDICES**

Attached to this report are the following appendices:

**Appendix A**—2017 Acts and Resolves No. 49, Section 42

**Appendix B**—Proposed legislative language on financial capacity considered by the Committee (but not agreed to)

**Appendix C**—Testimony on accountability for public resources

**Appendix D**—Proposed language for final report submitted by representatives of the independent school community

**Appendix E**—Rough working draft of special education plan related to general education independent schools prepared by the Agency of Education and as amended (in red) by Vermont Council of Special Education Administrators

**Appendix A**

2017 Acts and Resolves No. 49, Section 42

\* \* \* Approved Independent Schools Study Committee \* \* \*

Sec. 42. APPROVED INDEPENDENT SCHOOLS STUDY COMMITTEE

(a) Creation. There is created the Approved Independent Schools Study Committee to consider and make recommendations on the criteria to be used by the State Board of Education for designation as an “approved” independent school.

(b) Membership. The Committee shall be composed of the following ten members:

- (1) one current member of the House of Representatives who shall be appointed by the Speaker of the House;
- (2) one current member of the Senate who shall be appointed by the Committee on Committees;
- (3) the Chair of the State Board of Education or designee;
- (4) the Secretary of Education or designee;
- (5) the Executive Director of the Vermont Superintendents Association or designee;
- (6) the Executive Director of the Vermont School Boards Association or designee;
- (7) the Executive Director of the Vermont Independent Schools Association or designee;
- (8) two members of the Vermont Council of Independent Schools, who shall be chosen by the Chair of the Vermont Council of Independent Schools; and
- (9) the Executive Director of the Vermont Council of Special Education Administrators or designee.

(c) Powers and duties. The Committee shall consider and make recommendations on the criteria to be used by the State Board of Education for designation as an “approved” independent school, including the following criteria:

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

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

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

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Agency of Education.

(e) Report. On or before December 1, 2017, the Committee shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and any recommendations, including recommendations for any amendments to legislation.

(f) Continuation of rulemaking. It is the intent of the General Assembly to resolve the issues raised by the State Board of Education’s proposed amendments to the 2200 Series of its Rules and Practices initiated by the State Board on November 13, 2015 (Rules for Approval of Independent Schools) after taking into account the report of the Committee required under subsection (e) of this section. Therefore, notwithstanding any provision to the contrary under 16 V.S.A. § 164, the State Board of Education shall suspend further development of the amendments to the Rules for Approval of Independent Schools, pending receipt of the report of the Committee, and shall further develop these amendments after considering the Committee’s report.

(g) Meetings.



(1) The Secretary of Education shall call the first meeting of the Committee to occur on or before May 30, 2017.

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

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

(4) The Committee shall cease to exist on December 2, 2017.

(h) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than seven meetings.

(2) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than seven meetings.

Proposed legislative language on financial capacity considered by the  
Committee (but not agreed to)

The Committee was unable to reach agreement on proposed legislative language concerning the scope and nature of financial information that should be required to be reported by approved independent schools to the State Board. Set forth below is the last draft of the proposed legislative language that was discussed by the Committee. The main areas of disagreement among Committee members on this language concerned whether the information to be submitted to the State Board would be sufficiently robust to facilitate a meaningful review of the school's financial capacity and the degree to which the State Board would have discretion to determine whether the material submitted demonstrated the school's financial capacity.

Proposed legislative language considered by the Committee (but not agreed to):

16 V.S.A. § 166(b) is amended to read:

\* \* \*

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

\* \* \*

(8)(A) An independent school shall seek to demonstrate its financial capacity for approval under this subsection by providing to the State Board with its application for approval:

(i) a statement of financial capacity for the school's current or immediately preceding fiscal year issued by:

(I) an accrediting agency recognized by the State Board;

(II) a licensed certified public accountant or licensed certified public accounting firm; or

(III) a peer review team or independent reviewer appointed by the [Council of Independent Schools] and approved by the Secretary of Education;

(ii) an audit report for the school's current or immediately preceding fiscal year issued by a licensed certified public accountant or licensed certified public accounting firm; or

(iii) IRS Form 990 for the school's current or immediately preceding fiscal year.

(B)(i) The State Board shall find that an independent school that submits any of the documentation under subdivision (A) of this subdivision (8) has demonstrated the financial capacity for approval under this subsection if it finds that:

(I) the documentation demonstrates that the school has the financial capacity to meet its stated objective for the period covered by the documentation; and

(II) the documentation does not contain information that causes the State Board to believe that the school would likely be unable to maintain its financial capacity to meet its stated objective during the period of State Board approval.

(ii) Nothing in this section prohibits an independent school from voluntarily submitting additional information related to its financial capacity to the State Board or

prohibits the State Board from finding that the school has demonstrated its financial capacity based upon this additional information.

(iii) If the State Board does not find that the school has demonstrated its financial capacity for approval under this subsection, the State Board may approve the school subject to conditions imposed by the State Board that are designed to provide the State Board with assurance that the school will have the financial capacity to meet its stated objective within a reasonable period of time as determined by the State Board.

(iv) The State Board may require an independent school that is seeking approval for the first time to provide it with updated documentation under subdivision (A) of this subdivision (8) on a periodic basis during the approval period, provided that the school shall not be required to provide this documentation more than once in any 12-month period.

(C) If an approved independent school believes that it is or likely will become financially impaired, as defined in subdivision (D) of this subdivision (8), during the period of its approved status, the school shall notify the Secretary of Education within five days of making this determination. Annually, on or before August 1, an approved independent school shall compare its student enrollment for the current school year to the immediately preceding school year and, if its student enrollment has declined by 10 percent or more over this period, shall notify the Secretary of Education within five days of its determination. If an approved independent school has failed to file its federal or State tax returns when due (after taking into account permissible extension periods), it shall notify the Secretary of Education within five days of the due date.

(D) As used in this subsection, the term “financially impaired” means:

(i) the school’s failure to pay debts as they become due in the ordinary course of business, including the school’s failure to meet its payroll obligations as they are

due, to pay federal or State payroll tax obligations as they are due, or to pay any of its other expenses within 30 days of their due date;

(ii) the school's failure to comply with the financial terms of its debt obligations, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

(iii) the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State, or regional agency recognized by the State Board for accrediting purposes; or

(iv) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

(E) If the State Board reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status due to its financial impairment, then the State Board shall notify the school in writing of the reasons for this belief and permit the school a reasonable opportunity to respond. If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may, with the written consent of the school, request the [Council of Independent Schools] to establish a review team and conduct a school visit to assess the school's financial capacity and submit a report of its findings and recommendations to the State Board. The State Board may also require the approved independent school to submit updated documentation under subdivision (A) of this subdivision (8), provided that the school shall not be required to provide this documentation more than once in any 12-month period. If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status due to its financial impairment, the State Board may take any action that is authorized by this section.

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

(G) Information provided by an independent school to demonstrate its financial capacity under this subsection that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

## Presentation Outline

### Rule Series 2200 Independent School Program Approval

#### Accountability for Public Resources

#### Approved Independent Schools Study Committee

Meeting of August 14, 2017

Jeffrey Francis, Vermont Superintendents Association  
Jo-Anne Unruh, Vermont Council of Special Education  
Administrators

Nicole Mace, Vermont School Boards Association

#### **Introduction & Legal Context:**

The professional associations we serve each works with, and represents, public school officials.

As public school officials, our members serve as stewards of public resources. They have accountability to students and to taxpayers.

Regarding taxpayers, our Associations support public school officials in their focus on efficiency, effectiveness and **equity**.

Regarding students, our Associations support public school officials in their adherence to obligations best summarized by

Section 1 of Title 16, which states: “The right to public education is integral to Vermont’s constitutional form of government and its guarantees of political and civil rights. Further, the right to education is fundamental for the success of Vermont’s children in a rapidly-changing society and global marketplace as well as for the State’s own economic and social prosperity. To keep Vermont’s democracy competitive and thriving, Vermont students must be afforded substantially equal access to quality basic education . . .”

Regarding the obligations of public school officials both to and for students and taxpayers, we find Article 6 of the Vermont Constitution to be relevant.

It reads: “That all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times, in a legal way, accountable to them.”

While this provision speaks to members of the General Assembly and the Executive Branch of state government, we believe that the reference to accountability as trustees also applies to other public officials.

Finally, also relevant to this conversation is the interpretation of Article 7 of the Vermont Constitution under Brigham v. State.

We want to call the attention of the Committee to the Vermont Bar Journal article that was distributed with this meeting’s agenda. It’s author states, “It does not appear that an education system that denies students with disabilities the opportunity to attend their taxpayer-funded community independent school can withstand scrutiny under Vermont law. [In *Brigham v. State*], the Vermont Supreme Court,



citing *Brown v. Board of Education*, held that a ‘system [that] has fallen short on providing every school-age child in Vermont an equal education opportunity’ violates the Education and Common Benefits Clauses of the Vermont Constitution.”

Data from the Agency of Education illustrate disparities in publicly-funded independent school enrollment between low-income students and students with disabilities and their higher-income, non-disabled peers. We urge this Committee to request this data from the Agency of Education in order to evaluate whether the current tuitioning system is indeed providing every school-age child in Vermont an equal opportunity.

### **Public Mission v. Private Mission**

Discussion around possible revisions to the rules governing independent schools has included numerous references to “mission” and “mission-based” or “mission-driven” education.

In our view, the mission of public schools is clear and is clearly articulated in Title 16 Section 1. The mission of public schools is intended to support every child and his or her right to an equal education.

The mission of independent school(s) is generally less clear, and seems, in some cases, to tilt toward the institution and the students who 1) are successfully enrolled in that institution, and 2) succeed in remaining in that institution over time.

The recommendations presented by the independent schools suggest that enrollment in these private schools must be governed by “best fit,” given the private school’s “mission.”

The belief appears to be that in order for a school to be effective in fulfilling a mission, the school must be able to exclude students who do not conform to the school's mission.

This approach to admissions and retention can allow for both conscious prejudice and unconscious biases to shape who is perceived to be a "good fit" for a school. Extensive research into the science of human cognition indicates that even people who consciously reject prejudice and discrimination have biases that can affect their perception and behavior.

In the public context, there are clear procedural safeguards to prevent unconscious biases from affecting the implementation of enrollment, discipline, and advancement policies. In the private context, it is not clear what safeguards exist to prevent unconscious biases from interfering with a child's right to publicly-funded education.

### **Independent Schools Rely on Public Dollars for Viability and Vitality**

Data provided in the July 19 presentation to the Committee by Seth Bongartz, Michael Livingston and Liz Shayne indicate that the range of publicly tuitioned students served by the (so-called) Town and Comprehensive Academies varies from 65% to 96%. While the presentation notes that percent tuitioned students is not a marker for total available resources to the institution and we have no insight into the financial condition of each institution, it does stand to reason that for some of these institutions there is a dependence on public resources for the institution's viability.

In addition, four of the more prominent "general education" independent schools have significant percentages of publicly tuitioned students.

They are:

Long Trail School - enrolling 171 - 66% publicly  
tuitioned

The Sharon Academy - enrolling 155 - 87%  
publicly tuitioned

Maple Street School - enrolling 116 - 41%  
publicly tuitioned

The Riverside School - enrolling 72 - 63% publicly  
tuitioned

It also seems reasonable to assume that these institutions depend on public resources for their viability.

### **Challenges to Well-Informed Discourse**

Since the outset of deliberations focused on potential changes to Rule 2200, we have found it difficult to contribute fully to well-informed discourse on the topic. It has been difficult for four principle reasons:

1. Missteps by the State Board of Education in its early introduction of proposed amendments to the rules, which were construed as overreach on the part of the State Board.
2. The strength of response to the early proposed amendments by the independent schools and their representatives - who perceived their mission, history, culture and perhaps future viability to be threatened.
3. The wide variability in the type and nature of the institutions included within the umbrella "independent school." This makes public policy to address those institutions more complicated and thus more challenging.

4. The nature of the relationships between public schools, families and students with independent schools challenges us to put public school officials and families/students “on the record” regarding their experiences with the independent schools. Both with respect to issues around special education and enrollment/discipline/retention we have examples from public school officials and families/students who have said “ we want you to know this but we can’t say it publicly because we fear backlash (from the independent school).”

### **Our Approach to the 2200 Series**

Since the outset of this process, our approach has been consistent. We have conferred with our members, we have reviewed laws, regulations and testimony, we have sought to understand the position of the independent schools and we have sought information from school officials and families who have specific experience in the interaction with independent schools.

Our areas of focus have centered on the three principle issues currently under discussion by this Committee: special education; and enrollment/retention and discipline; and financial capacity.

### **Some Important Distinctions/Clarifications:**

For the purposes of this discussion, we find it critical to clarify that there are three types of independent schools. They are:

- *Approved independent schools providing general education to publicly-funded students* through Vermont's tuition program - special education students enrolled are entitled to FAPE
- *Approved independent providing general education exclusively to privately-funded students*; these schools accept no public tuition dollars. In this context, privately-placed students with disabilities lose entitlement to FAPE, and are eligible for very limited funding for services such as speech-language or reading skills instruction
- *Approved Independent schools serving a specialized population of students with disabilities only* - generally such schools in Vermont accept only students who are placed by Local Education Agency (LEA); these students are publicly-funded and entitled to FAPE

Within the first type of approved independent schools - those that accept publicly-funded tuition students, there are two more categories: those that are approved to serve all special education categories, and those that are approved for a limited (or no) category(ies) of disabilities.

#### *Independent Schools Approved in All SpEd Categories*

Independent schools that serve all categories of disability for students ages 3 through 21 have licensed special education staff and have sought and received approval from the Agency of Education (AOE) to serve all students in all applicable categories of disability.

However, this does not mean that these independent schools that are approved in all categories necessarily serve every student with a disability who applies. In some cases a limit is

placed on the number of special education eligible students admitted.

In other cases a student is denied admission because the independent school determines that the student is not a “good fit” or does not meet the “mission” of the school. In still other cases both the LEA and the independent school - through the IEP process - determine that the independent school cannot serve the student appropriately and that another school or placement is determined to be necessary to provide FAPE to the student.

### *Independent Schools Choosing Not to Serve All SpEd Categories*

A significant subset of independent schools that accept publicly-funded students choose not to serve all SpEd categories. This practice creates unequal access for students with disabilities whose peers are able to attend an independent school that is not available to them. In this context, it is the experience of some special education administrators that the sense of rejection and isolation for students and their families for those not admitted is heightened.

Sometimes an effort is made on the part of the independent school to change the disability category of the student seeking admission to one that would allow the child to attend if this is a student they are inclined to enroll. This practice is in violation of Vermont Special Education Regulations.

### **Special Education - Approval to Provide Services**

Public schools have well defined obligations with regard to the identification, evaluation, eligibility and provision of

services to children who are suspected of or have been determined to be eligible for special education.

Free, appropriate public education (FAPE) at no cost to the parent is a foundational concept in both the federal Individuals with Disabilities Education Act and Vermont Special Education Regulations for children between the ages of 3 through 21.

An additional foundational concept is that the services provided to a special education student must take place in the Least Restrictive Environment (LRE). LRE means that “A student eligible for special education services shall be educated with his or her non-disabled chronological age peers to the maximum extent appropriate **in the school he or she would attend if he or she did not have a disability...**”

Vermont law does not require independent schools accepting public tuition vouchers to be approved to serve students with disabilities. Current regulations, however, prohibit a school district from paying tuition to an independent school that is not approved in a disability category required for a specific student.

This means that students with disabilities do not have access to the same independent schools that their non-disabled peers have access to. We refer you to the VT Bar Journal article for illustrations of the damage this differing treatment can do to students and their families.

Nevertheless, independent schools have resisted the requirement to obtain special education approval, raising concerns regarding the financial burden associated with being approved in all 13 categories of special education.

*Recommended Solution:*

Our proposed language requires that, in order for an independent school to admit publicly funded students, the school must employ or *have access to* a licensed special educator. This could be accomplished by working with a nearby supervisory union/district or with another independent school.

If a publicly-funded student is admitted to an independent school under an open enrollment process (described below), and that student is eligible for special education services, the language we proposed in January requires the IEP team to meet with a representative from the independent school to determine what special education and related services the student will need to be successful in the independent school, and update the student's IEP goals and services accordingly.

If the school district of residence determines the independent school lacks approval in the student's specific disability category, the local educational agency (LEA) and the independent school and the Agency of Education shall work together to determine how services and supports can be provided within the independent school until the independent school obtains Agency approval, provided that the independent school shall obtain approval for an enrolled student's disability category within the school year when the student first enrolled.

We believe this approach maintains the role of the IEP team and the LEA required by state and federal law. It also allows a school district to pay tuition to an independent school, even if the school does not have special education approval in a specific category of disability, so long as the school is able to



obtain that approval within a year. If the open enrollment provisions are adhered to, and the IEP team retains ultimate decision-making authority with respect to placement and services, we believe this process will ensure equal access to publicly-funded openings for students with disabilities.

### **Special Education - Supervision Issues**

Adherence to special education rules and regulations and ensuring best practice in teaching and intervention are necessary elements of responsible special education practice. Overall, there are concerns about the amount of time spent on relationship building with the independent school because clear standards and expectations are not in place in a range of important areas of practice.

Communication with the LEA around student needs is frequently lacking, and compliance with state and federal laws and regulations is often uneven.

#### *Recommended Solution:*

The rules need to clarify the expectations of two different roles – the LEA representative and the special education case manager. The LEA representative must assure that appropriate services, allowable costs and other aspects of assuring compliance with special education law.

The case manager in the independent school should be responsible for assuring that services are being delivered as required by the IEP and that the classroom teachers are fully apprised of their responsibilities, keeping track of IEP goals and the progress data, and supervising the service delivery by making sure those implementing the services have the professional development and supervision to do so.

The LEA is not positioned to assess whether teachers in an independent school have an understanding of best teaching practices for certain disabilities, is unable to provide direct supervision of staff within independent schools, and cannot functionally provide staff for the array of independent schools the LEA pays tuition to. Such a requirement would be very costly and difficult to implement.

### **Special Education - Billing Issues**

In order to receive reimbursement funds from the state, LEAs must submit extensive documentation describing staffing, professional development, supplies, administrative costs and contracted services to the AOE. This documentation includes completing a time schedule twice a year in which staff members document their schedule for the week, the students served, and the services provided. Time schedules are matched to student IEPs to ensure that students received services according to their IEP and that a district's claim for reimbursement is appropriate. This documentation takes considerable time and resources.

Vermont state law does not require the same level of oversight for independent schools. Instead, independent schools must only submit bills to the supervisory union for "reasonable" special education costs in excess of tuition.

There are guidelines regarding what can be included in these costs, including salaries, benefits, professional development, supplies and materials, and contracted services. However, there are no restrictions on how much an independent school can charge the LEA for services. LEAs have to determine what is "reasonable" with the independent school on a case-by-case basis. But determining what is "reasonable" can be

difficult. There are no established standards for what might be considered a reasonable cost.

The current system also encourages “cost maximization” from independent schools rather than incentivizing them to minimize costs. One example of cost maximization was when an independent school billed the hourly rate for speech language services (\$80.00 per hour) for each of the students included in a group of five students served. As a result, a school district was expected to pay \$400.00 for an hour of service that actually cost the independent school \$80.00.

*Recommended Solution:*

Require the Agency of Education to publish specific elements that must be included as part of an independent school’s invoice for excess special education costs. These elements should be included in every contract a school district has with an independent school.

The rules should be clarified as to the billing requirements for specialized independent schools serving exclusively special education students and general education independent schools who also serve students with disabilities.

## **Enrollment & Retention**

While some independent schools accept the overwhelming majority of students that apply, some do not. There is no requirement that independent schools accept every publicly-funded child that seeks enrollment. We are not clear what the specific enrollment policies are for each independent school, even those that state they have an open enrollment policy. Some require the completion of an application and/or site visit as part of the enrollment process. We have seen

applications that ask parents to disclose the disability status of students seeking to enroll. These practices may create barriers for families seeking to enroll their student at the school.

There is also no requirement that, if accepted, an independent school continue to enroll publicly-funded students. Once a student is accepted in an independent school the experience of some administrators is that students are not always maintained in that placement. It is not uncommon to have students counseled out, again because of reasons of “fit”, not meeting the school’s “mission” or because of troublesome behaviors or disciplinary action.

At that point, responsibility reverts back to the parents and/or school district to find an appropriate placement. This can sometimes be a real challenge, particularly when the local district/SU doesn’t operate a public school for the particular student’s grade level.

In the special education context, there are significant differences between the accountability of the LEA and that of the independent schools. The LEA remains responsible for the student regardless of the school - public or private or independent - in which the student is enrolled. The IEP Team is required by law and regulation to locate an appropriate placement and to continue to support that placement both financially and assure that the IEP is being implemented.

This level of responsibility is not required of independent schools. Independent schools can determine the child is not a “match” for the school for reasons of mission or fit. They are not required to participate in a process with the LEA to find an appropriate placement for any child that has been dismissed.

*Recommended Solution:*

The most common procedural safeguard in the enrollment context is for admissions to be open and based on a lottery system. Most states in the country that allow public education dollars to go to private schools require those schools to administer a lottery if demand exceeds capacity. In Vermont, public high schools are required to administer a lottery for admissions under the public high school choice law.

Once enrolled under a lottery system, the rules should specify that publicly funded students shall be permitted to remain enrolled in the independent school without renewed applications in subsequent years unless:

- the student graduates;
- the student is no longer a resident of the district which pays tuition;
- an IEP team determines that an independent school is unable to provide the services and supports required by a student's IEP; or
- the student is expelled from school in accordance with the following section.

**Discipline**

It is unclear as to the degree to which infractions of school rules are treated consistently with the requirements for public schools. Independent schools do not necessarily report back to the public school what occurred and are not required to report disciplinary actions to the AOE in the same manner as is required of public schools. There is also no requirement

that independent schools provide due process to students who are suspended or expelled from school.

Administrators report that students enrolled in independent schools have been expelled at the discretion of the headmaster without clear understanding of whether the student is expelled for a specific infraction of the conduct code, or if the student is “not a good fit.”

The discipline process may not be communicated to the parents or the LEA. Instances of expulsion often come as a surprise to the LEA and parents, who have to find a placement for the student with little to no notice. Sometimes the result is expulsion without a deep understanding of the child’s behaviors or the interventions that could maintain the child in the independent school setting.

In the context of the expulsion of a student with a disability, a change in the special education student’s placement without due process is both against the law and regulation but also costly to the child’s education and sense of belonging. It can also exacerbate the underlying difficulties for child and family.

*Recommended Solution:*

Publicly-funded students should have access to disciplinary due process protections similar to those provided in public schools. Independent schools that accept public tuition dollars should also be required to report to AOE discipline violations, suspensions and expulsions for publicly-funded students as public schools do.

In the context of students with disabilities, independent schools must follow the discipline requirements for students with disabilities in public schools, including manifestation

determinations to determine the relationship between the disability and the behavior in question, behavior intervention planning and documentation of violations and progress.

The rules should require communication with the LEA regarding significant disciplinary infractions so that the LEA can plan proactively for the student's needs, and to access behavioral expertise.

### **Demonstrating Financial Capacity**

This is the simpler of the three issues. From our perspective, the interest of the public, and of public school districts is two-fold. Public policy should:

1. Ensure that the legislative and executive branches have put into place sufficient measures to fulfill their obligations as public trustees of public funds.
2. Ensure the long-term viability of the independent school serving as the public school or serving publicly funded students, especially in areas where the independent school is "the only game in town."

With those interests stated, we are content to rely on state officials to enact measures to assure the fiscal integrity and security of independent schools receiving public dollars.

Proposed language for final report submitted by representatives of the independent school community

TO: SENATOR PHILIP BARUTH, CHAIR  
APPROVED INDEPENDENT SCHOOL SUMMER STUDY COMMITTEE  
FROM: SETH BONGARTZ, ELIZABETH SHAYNE, MICHAEL LIVINGSTON  
RE: PROPOSED LANGUAGE FOR FINAL REPORT SUBMITTED BY  
REPRESENTATIVES OF THE INDEPENDENT SCHOOL COMMUNITY  
DATE: DECEMBER 11, 2017

The independent school community submit the following for consideration by the full committee for inclusion in the committee's final report. We submit this early in the week before our final meeting on December 15<sup>th</sup> so that it can be posted and available to all for consideration. The proposed language is consistent in both intent and content with the proposals we have made over the course of the summer with regard to financial capacity and a practical mechanism for the smaller independent schools to provide special education services to those needing them.

From the perspective of the independent school community, the report proposed below is the result of significant compromise and workable proposals. They are responsive to the committee's legislatively established charge and we are hopeful they will be embraced.

**Introduction**

Vermont independent school approval criteria have been under review and discussion in the State Board of Education and more recently in this legislatively-mandated study committee.

The committee's charge was to develop language to present to the committees of jurisdiction prior to the start of the 2018 legislative session. In part because the issues are so complex, the summer study committee has determined it more prudent to develop a report focused principally on ways of providing reasonable assurances of independent schools' financial capacity to meet their stated missions and to develop a framework by which approved independent schools could be capable of providing special education services.

The committee therefore focused principally on possible ways of providing reasonable assurances for the ability of independent schools' financial capacity to fulfill their stated missions and develop a framework by which approved independent schools could be capable of providing special education services to students with disabilities.



This report provides context and makes recommendations pursuant to the legislative charge to the committee.

## **Financial Capacity**

### **Analysis**

**State law currently requires independent schools to demonstrate their financial capacity to meet their stated objectives as a condition for approval 16 V.S.A. § 166(b).**

Half of Vermont's 44 state approved non-sectarian general education independent schools are accredited by the New England Association of Schools & Colleges (NEASC). The Agency of Education and the State Board of Education accept NEASC accreditation as a rigorous standard that satisfies the state's regarding a school's financial capacity.

The 22 NEASC-accredited schools are the principal independent education providers in Vermont. The 22 approved independent schools without NEASC accreditation are substantially smaller. Details are shown in the table below:

	Accredited Schools			Non-Accredited Schools		
	Total	Public Tuition	Public %	Total	Public Tuition	Public %
Total Enrollment	4,588	2,589	56%	1,106	120	11%
Median	115	34		33	4	
Number of Schools	22			22		

The accredited schools enroll 91 percent – all but 120 -- of publicly tuitioned students attending approved independent schools. Because of their accredited status, their financial capacity is presumed to have been demonstrated beyond Vermont state standards.

**The financial capacity discussions within the Study Committee apply to the 22 non-accredited schools, enrolling only 120 students with public tuition support.**

These 22 schools range in total enrollment size from 4 students (Sugarwood School, Rutland) to 169 students (Orchard Valley Waldorf School, East Montpelier). Half of these schools enroll fewer than 33 students.

The risk exposure to taxpayers and to students involving financial failure of any of these 22 schools is very small, for two reasons. First, independent school closings have routinely been well managed. Though five small approved general education independents closed in the last eight years, none did so in anything other than an orderly manner and no taxpayer funds were lost. Second, the financial impact of a failure of a school with the median of four publically tuitioned students is minimal, one semester of tuition for a small handful of students. On top of that, of course, is the possibility of a lien on school assets or through use of the Vermont False Claims Act 32 V.S.A. §§ 630-640.

Because the financial capacity issue is very narrow and the actual risk very small, new financial capacity requirements should be narrowly tailored. And because resource constraints are a very significant factor in financial capacity determinations, requirements should be designed to minimize resource demands.

NEASC accreditation is too costly for the smaller independent schools. Creating a different yet burdensome financial capacity test that small schools would find difficult or impossible to meet would be an unnecessary and, as a practical matter, destructive response. And, while the Agency of Education has reviewed independent schools in the past, now neither it nor the State Board of Education have the resources needed to conduct financial capacity reviews.

**New financial capacity requirements should therefore:**

- ◆ Be narrowly tailored to the low risk of loss of public funds due to school failure; and
- ◆ Balance the gauging of financial capacity against the resource constraints of both the state and small independent schools seeking approval.

**Financial Capacity Proposal**

**The independent schools community offers a three-point proposal to meet these constraints.**

**First**, deem any of the following submissions as demonstrating financial capacity:

- ◆ a statement of financial capacity prepared by an accrediting agency (NEASC, e.g.), a licensed CPA or a peer reviewer; or
- ◆ an audit report; or
- ◆ an IRS Form 990 with an accompanying statement of capacity provided by a board of trustees.

No additional review or analysis would be required on the part of the state; financial capacity is verified by those with expertise, such as an accrediting agency, Certified Public Accountant, or independent peer reviewer, or attested to by a board of trustees having a fiduciary obligation.

**Second**, establish criteria for events that must be reported to the AOE within five days and which then could trigger inquiry into a school's financial capacity and possible subsequent action including conditional approval or denial of approval. Such events include:

- ◆ failure to pay federal/state payroll tax obligations;
- ◆ failure to make required retirement contributions;
- ◆ use of designated funds for non-designated purposes;
- ◆ withdrawal or conditioning of accreditation for financial reasons;
- ◆ filing a petition for bankruptcy.

**Third**, develop a state-level peer review process similar to that performed by NEASC, that would come into play at the request of the AOE should one of the above-described events occur at an approved independent school. This proposal accesses the expertise within the Council of Independent Schools (CIS)—the statutory advisory body to the AOE—whose members have from time to time been accessed by the Secretary for peer review activities. CIS members are heads of independent schools, some of whom are NEASC members who conduct reviews of independent schools for accreditation purposes. The review report would potentially find a lack of financial capacity, find that there is sufficient financial capacity or perhaps something in between. In the event the review report found something less than financial capacity it would, unless the review committee were to find no reasonable potential for remediation, set forth a plan for strengthening/insuring financial capacity.

### **Special Education and Open Enrollment**

#### **Analysis – The Independent Schools**

**Independent schools are prohibited from engaging in discriminatory admissions practices** by federal and state nondiscrimination and public accommodations statutes. Independent schools must provide reasonable accommodation and it is impermissible for an independent school to ask direct or indirect questions about an applicant’s disability or to make unnecessary inquiries related to the existence of a disability.

In addition, federal law is clear that the obligation to provide a free appropriate public education (FAPE) through special education services and to disburse special education resources rests solely with the Local Education Authority (LEA, which in Vermont is the supervisory union). Federal law bars independent schools from having the direct access to special education resources that is enjoyed by public schools.

Eleven of Vermont’s 44 approved independent schools have special education approvals in some or all disability categories. These schools enroll 2,422 publicly-tuited students, which is 89 percent of all students publically-tuited to independent schools. Put differently, **only 287 publically-tuited students -- eleven percent -- attend an independent school currently without a special education approval.** Details are shown in the table below.

	<b>Number of Schools</b>	<b>Total Enrolled</b>	<b>Publicly Tuited</b>	<b>Public %</b>
Schools with all Approvals	6	2,651	2,099	79%
Schools with some Approvals	5	532	323	61%
Schools without Approvals	33	2,511	287	54%

The five schools with approvals in fewer than all categories are approved in categories containing the largest populations of students with disabilities. This means a school with approvals in two categories is capable of providing special education services to 46 percent of all students with disabilities. A school with approvals in four categories is capable of serving 77 percent of all students with disabilities. The five least

populated disability categories together include only 2.9 percent of all Vermont students with disabilities.

While the data above show 33 schools without special education approvals, **one should not assume these schools are doing nothing to support students with disabilities or unusual needs.** Quite the contrary, many students eligible for special education or just short of eligibility are attending an independent school of their choice because their families believe the school is meeting their student's needs in ways they had not previously been met. In some cases, these are students whose families were dissatisfied with services provided in a general-purpose school. Many independent schools include within their mission a focus on highly individualized instruction and a culture of inclusion of students with unusual needs. Thus, while they may not have special education approvals, they are meeting often highly particularized needs that have not been or cannot be met in a general-purpose school.

Many approved independents include in their mission support for students who have done poorly in other schools. While many of these students are not special education-eligible, they definitely need a school with sensitivity to their struggles and the patience and expertise needed to reawaken them to their potential for success. Statistics on these schools do not show up in AOE reports, but the students often saved are very real.

Several of the 33 schools without special education approvals have so few publically-tuited students that they will find it easy to give up their general education approvals and stop taking publicly-tuited students if special education requirements are made too stringent. This would have the perverse effect of denying to students of low-income families access to the specialized education they need in order to thrive.

### **Analysis – The Resources and Burdens**

**Special education poses very challenging administrative burdens for independent schools.** The independent schools community has pointed out that the AOE's administration of the independent school special education approval process has often been slow, particularly onerous for first-time applicants and sometimes inscrutable. This general regulatory situation has been a strong disincentive for schools to gain and manage special education programs.

More fundamentally, Independent schools have raised strong concerns regarding the lack of special education professionals—special educators, speech & language pathologists, etc. — to serve students in small independent schools. Both the AOE and the Council of Special Educators have acknowledged this reality. In fact, as a practical matter, the challenge is currently insurmountable.

Additionally, the independent schools have expressed concerns over the complex, lengthy process required to obtain special education approvals. Concerns have been expressed in the study committee with respect to the AOE's capacity to conduct special education approvals for independent schools expeditiously. It has also been

brought to the attention of the study committee that the process for approving independent schools for special education is more burdensome than it is for public schools.

Finally, the independent schools have raised issues with regard to the rate-setting procedures, particularly as they relate to the provision of special education services.

Given all of the foregoing, one may reach several general conclusions:

- ◆ Large independent schools with diverse mission objectives have already included special education services in their programs.
- ◆ Few publicly-tuited students are attending schools that are unapproved for any special education services.
- ◆ Smaller schools with limited administrative resources find the challenge of gaining special education approvals and managing the substantial administrative overhead to be more than they can reasonably manage.
- ◆ There is an acute shortage of qualified special educators, making it effectively impossible for the smaller independent schools to access this special category of educators, especially in view of the fact that need may arise infrequently or never in any given small independent school.
- ◆ The AOE's rate setting procedures are a further impediment to small independent schools offering special education services.
- ◆ Excessively stringent special education requirements likely will result in fewer school choice opportunities when schools choose to give up approvals, thus taking choice from moderate and low-income families.

Independent schools view the landscape described above as a very narrow issue. **The goal in their view should be to remove barriers to providing special education services to which students are entitled.** Streamlining the special education approval process and rate-setting process should be the first step.

**The independent schools have proposed a collaborative resource sharing model with the LEAs.** This model acknowledges two key realities: Special education is a student-based federal entitlement for students with disabilities; and professional special education resources are by federal law housed within the LEAs.

The members of the independent school community, like all professionals involved in this conversation, wish to insure that special education services are delivered properly and that the students in need of these services are well-served. This can be accomplished regardless of location assuming the proper staff is involved. In order for small independent schools to deliver these services, independent schools must have equal access to special education resources to which the students are entitled.

These two initiatives—removal of barriers and equal access to resources—would make it practically possible for those schools that are not currently approved for special education to provide services.

**Independent schools (also) believe diversity in educational offerings is important.**

Small independent schools tend to come into existence to meet particularized student needs that are not/cannot be met via general-purpose schools. They have expressed concerns about proposals that would create uniformity, or would undermine the good work that many independent schools are doing for students that have struggled in other settings. It does not make sense to force an independent school that is serving students well in an alternative model to conform to a special education model that is not right for the student as a condition of receiving public dollars. It is critical that these considerations not be lost in the conversation.

**Special Education Proposal**

Independent schools should have equal access to the special education funds and resources managed by Supervisory Unions, and the Agency of Education should simplify its rate-setting and either simplify or eliminate as unnecessary its approval processes so that schools are not deterred from engaging in special education due to unmanageable administrative burdens.

IEP Teams should give equal consideration to public and to independent schools when considering placement recommendations for disabled students eligible to choose an independent or public school.

Home LEAs should make available the necessary teachers, administrative support and other resources that make up the special education service entitlement of any student with a disability who chooses to enroll in an independent school.

LEAs, in consultation with independent schools, should adopt a standardized protocol for special education resource accountability and financial transactions. This requirement is intended to ease the administrative burden on independent schools that serve disabled students from multiple LEAs.

LEAs, in consultation with independent schools, should adopt a collaborative resource sharing model that addresses protocols for oversight and supervision of staff, compliance with school policies, etc.

The Agency of Education should fulfill its special education rate setting responsibilities in a timely manner, so that independent schools have adequate time before the beginning of a school year to arrange their services and manner of delivery. The Agency's recent difficulty in doing so have created notable inconvenience and significant added costs for schools currently providing special services and are a disincentive to other schools considering adding special education services.

A new independent school tuition rate ceiling formula that more properly compensates independent schools for educating publically-tuitioned students should be adopted. The current tuition rate-setting formula does not adequately provide for the added administrative overhead involved in the provision of special education services.

## **Conclusions**

Often lost in this discussion is a sound understanding of the outcomes independent schools deliver for the young people we serve. The vast majority of publically-tuited students served are at schools that are both nationally accredited and are approved in all special education services. This is therefore a very narrow issue in terms of school size and number of publically-tuited students.

The independent schools community is committed to properly calibrated education reforms that offer strategies for demonstrating financial capacity as well as those that address questions about special education services.

The special education proposal in particular—to permit students with disabilities to enroll in any approved independent school—is a major change and is very responsive to the long-standing requests from the public education establishment.

## Appendix E

Working document reflecting AOE and VCSEA work  
**~~SPECIAL EDUCATION PLAN RELATED TO GENERAL EDUCATION~~**  
**~~INDEPENDENT SCHOOLS~~**

### Approval

1. In order to be approved as an independent school eligible to receive public education funds, a school will have demonstrated an ability to serve students with disabilities. Specifically, it must:
  - a. demonstrate an understanding of special education requirements, including
    - i. provision of FAPE;
    - ii. provision of education in the least restrictive environment; -and
    - iii. the characteristics and educational needs of students with all categories of disability or suspected disability named in IDEA and Vermont State Board of Education (SBE) Rules; and
    - iv. procedural safeguards and parental rights, including discipline procedures, specified in federal and state law.
  - b. commit to implementing the individualized educational plans (IEPs) of its students with special education needs ~~students~~, providing the required services, and appropriately documenting the services and the student's progress;
  - c. have staff with the required licensure to provide special education.
  - d. agree to communicate with the responsible LEA (which is the student's home district) about the IEP, services provided and the student's progress, including when there is any concern about maintaining the student in the independent school in which the student is currently enrolled, recommended changes in service, and regarding students with suspected disabilities.-
  - e. commit to participate in dispute resolution as provided in federal and state law.
2. Commitment to these foundational special education requirements shall be incorporated into every agreement between the responsible LEA and an approved independent school.
3. An approved independent school that commits to this foundational level of special education preparedness is not required to demonstrate that it has the resources to serve every category of special education



in order to be approved or retain its approval to receive public education funding.

### **Funding**

1. Approved independent schools that have open enrollment policies and agree to serve all students with disabilities in all categories of disability within the age or grade range served by the independent school will receive the full general education tuition rate for all of its publicly funded students.
- ~~2.~~ Approved independent schools that do not have open enrollment policies or determine that its educational philosophy, resources or capabilities are inconsistent with enrollment of students with some ~~categories of disabilities~~, will not receive tuition for ~~all of its publicly funded students. (not just students with disabilities) at a rate that is 80 percent of the full education tuition rate.~~

### **Placement and Location** (this might need to go into the special education SPED Rules)

1. In accordance with federal and state law, the responsible LEA will offer a continuum of alternative placements (e.g., instruction in general education classes, provision for supplementary services in conjunction with general education placement, resource room services, special classroom services, special schools, or home instruction, to a student with an IEP; these placements will be determined at the IEP meeting. There is no requirement for the LEA to offer a particular school for implementation of the placement. The starting point should always be the school the student would attend in the absence of a disability and ideally as close as possible to the student's home, unless the parents agree to another location.
- ~~2.~~ Enrollment in an approved independent school may occur and be publicly funded if the IEP team for the student determines that the approved independent school offers a placement consistent with the student's IEP and in the least restrictive environment. This determination will be based on the approved independent school demonstrating that it has the requisite staff and capability to serve the student according to the student's IEP. As per Vermont special education rule the decision is made by the LEA through the IEP Team process; if there is disagreement the LEA representative makes the decision.

43.An approved independent school ~~s~~ that demonstrates it has the requisite staff and capability and to provide the special education and related services to a student may bill the responsible LEA for special education and related services provided in accordance with the IEP. Reimbursement for services beyond those provided in the general education classroom will be based on the direct costs rates approved by the Agency of Education for services actually provided to the student consistent with the AOE Technical Manual for special education cost accounting and approved by the Agency of Education. The school must provide detailed invoices to the LEA in advance of reimbursement.

54.In cases where the responsible LEA district provides a service that is necessary to implement the student's IEP, the approved independent school will not be paid or reimbursed for such service.

65.Decisions about how special education services will be provided and specifically, whether to provide the services directly or through coordination with the approved independent school's special education staff will be made by the responsible LEA's representative.

76.After an approved independent school has accepted a student with disabilities, representatives of the school will attend all EPT (Evaluation and Planning Team) and IEP meetings for that student. Independent school representatives may not attend IEP meetings prior to accepting a student, absent parental consent, as this would be a violation of FERPA.

87.Unilateral placements and "proportionate share" ~~equitable~~ services will continue to be governed by federal and state law.

98.Responsible LEAs may limit the number of general education schools to which it will send its publicly funded students. However, if an IEP team determines that a student with a disability requires a placement outside of the general education schools to which the responsible LEA sends its other publicly funded students, the LEA shall provide that placement.

9.If school choice in a particular district includes all non-sectarian approved independent schools in the state for its students, then the same options should be available to students with disabilities.

10.As required by state and federal law a continuum of alternative placements must be available to students with disabilities in order to provide an appropriate education. Vermont approved independent schools serving students with disabilities exclusively are subject to different requirements from the independent general education schools. Some key distinctions in requirements need to be clarified in state regulation:

a. These specialized schools must be approved for the specific disability categories served, and are not required to serve all categories of disability.

~~10~~ b. Tuition rate setting processes established by the AOE apply. Excess cost for individual students, exceeding the approved tuition rates, are subject to the process identified in #3 under Placement and Location above.