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May 1, 2019

**(Very) Unofficial Version of as passed Senate version of H.521**

**Compiled by Jim DesMarais, Legislative Counsel**

An act relating to amending special education laws and Act 46

\* \* \* Act 173 amendments \* \* \*

Sec. 1. PURPOSE

(a) 2018 Acts and Resolves No. 173 made substantial changes to the funding of special education services and directed the Agency of Education to assist supervisory unions in adopting best practices for the delivery of special education services. This act makes certain minor amendments to the special education laws that are proposed by the Agency of Education to clarify some of the changes made in Act 173.

(b) This act also amends certain dates in Act 173 to provide an additional year to prepare for the changes in the funding and delivery of special education services required by Act 173.

Sec. 2. 2018 Acts and Resolves No. 173, Sec. 2 is amended to read:

Sec. 2. GOALS

\* \* \*

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal

1 year ~~2021~~ 2022, for school year ~~2020-2021~~ 2021-2022, from a reimbursement  
2 model to a census-based model, which will provide more flexibility in how the  
3 funding can be used, is aligned with the State’s policy priorities of serving  
4 students who require additional support across the general and special  
5 education service-delivery systems, and will simplify administration.

6 \* \* \*

7 Sec. 3. 16 V.S.A. § 2961 is amended to read:

8 § 2961. CENSUS GRANT

9 (a) As used in this section:

10 \* \* \*

11 (3) “Long-term membership” of a supervisory union in any school year  
12 means the average of the supervisory union’s average daily membership over  
13 the most recent three school years for which data are available.

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

15 (A) dividing an amount:

16 (i) equal to the average State appropriation for fiscal years ~~2018,~~  
17 ~~2019, and 2020~~ 2019, 2020, and 2021 for special education under  
18 sections 2961 (standard mainstream block grants), 2963 (special education  
19 expenditures reimbursement), and 2963a (exceptional circumstances) of this  
20 title; and



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~~ 2026 and subsequent fiscal years, the amount of  
4 the census grant for a supervisory union shall be the uniform base amount  
5 multiplied by the supervisory union's long-term membership.

6 (3) For fiscal years ~~2022, 2023, and 2024~~ 2023, 2024, and 2025, the  
7 amount of the census grant for a supervisory union shall be determined by  
8 multiplying the supervisory union's long-term membership by a base amount  
9 established under this subdivision. The base amounts for each supervisory  
10 union for fiscal years ~~2022, 2023, 2024~~ 2023, 2024, and 2025 shall move  
11 gradually the supervisory union's fiscal year ~~2021~~ 2022 base amount to the  
12 fiscal year ~~2025~~ 2026 uniform base amount by prorating the change between  
13 the supervisory union's fiscal year ~~2021~~ 2022 base amount and the fiscal year  
14 ~~2025~~ 2026 uniform base amount over this three-fiscal-year period.

15 Sec. 4. 16 V.S.A. § 2967 is amended to read:

16 § 2967. AID PROJECTION

17 (a) On or before December 15, the Secretary shall publish an estimate, by  
18 each supervisory union, of its anticipated State special education ~~expenditures~~  
19 funding under this chapter for the ensuing school year.

1 (b) As used in this section, State special education expenditures funding  
2 shall include:

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

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

6 (3) ~~costs~~ funds for persons who are deaf or hard of hearing;

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

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

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

12 Sec. 5. 16 V.S.A. § 2975 is amended to read:

13 § 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL  
14 ASSISTANCE

15 The Secretary may use ~~up to two percent of the funds appropriated for~~  
16 ~~allowable special education expenditures, as that term is defined in State Board~~  
17 ~~of Education rules, to directly assist supervisory unions with special education~~  
18 ~~expenditures of an unusual or unexpected nature~~ funds for allowable special  
19 education expenditures, as defined in State Board of Education rules, to  
20 directly assist supervisory unions with special education expenditures of an  
21 unusual or unexpected nature. These funds shall be appropriated in the amount

1 of two percent times the Census Grant as defined in section 2961 of this title.

2 The Secretary’s decision regarding a supervisory union’s eligibility for and  
3 amount of assistance shall be final.

4 **Sec. 6. 2018 Acts and Resolves No. 173, Sec. 12 is amended to read:**

5 **Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE**  
6 **DELIVERY OF SPECIAL EDUCATION SERVICES**

7 **(a) The Agency of Education shall, for the 2018–2019, 2019–2020, ~~and~~**  
8 **2020–2021, and 2021–2022 school years, assist supervisory unions to expand**  
9 **and improve their delivery of services to students who require additional**  
10 **supports in accordance with the report entitled “Expanding and Strengthening**  
11 **Best-Practice Supports for Students who Struggle” delivered to the Agency of**  
12 **Education in November 2017 from the District Management Group. This**  
13 **assistance shall include the training of teachers and staff and technical**  
14 **assistance with the goal of embedding the following best practices for the**  
15 **delivery of special education services:**

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

17 **(2) providing additional instructional time outside core subjects to**  
18 **students who require additional support, rather than providing interventions**  
19 **instead of core instruction;**

20 **(3) ensuring students who require additional support receive all**  
21 **instruction from highly skilled teachers;**

1 (4) creating or strengthening a systems-wide approach to supporting  
2 positive student behaviors based on expert support; and

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

5 (b) The sum of \$200,000.00 is appropriated from federal funds that are  
6 available under the Individuals with Disabilities Education Act for fiscal  
7 year 2019 to the Agency of Education, which the Agency shall administer in  
8 accordance with this section. The Agency shall include in its budget request to  
9 the General Assembly for each of fiscal years 2020 ~~and~~ 2021, and 2022 the  
10 amount of \$200,000.00 from federal funds that are available under the  
11 Individuals with Disabilities Education Act for administration in accordance  
12 with this section.

13 (c) The Agency of Education shall present to the General Assembly on or  
14 before December 15 in 2019, 2020, ~~and~~ 2021, and 2022 a report describing  
15 what changes supervisory unions have made to expand and improve their  
16 delivery of services to students who require additional supports and describing  
17 the associated delivery challenges. The Agency shall share each report with all  
18 supervisory unions.

1 Sec. 7. 2018 Acts and Resolves No. 173, Sec. 16 is amended to read:

2 Sec. 16. RULEMAKING

3 The Agency of Education shall recommend to the State Board proposed  
4 rules that are necessary to implement this act and, on or before November 1,  
5 ~~2019~~ 2020, the State Board of Education shall adopt rules that are necessary to  
6 implement this act. The State Board and the Agency of Education shall  
7 consult with the Census-based Funding Advisory Group established under  
8 Sec. 9 of this act in developing the State Board rules. The State Board rules  
9 shall include rules that establish processes for reporting, monitoring, and  
10 evaluation designed to ensure:

11 (1) the achievement of the goal under this act of enhancing the  
12 effectiveness, availability, and equity of services provided to all students who  
13 require additional support in Vermont's school districts; and

14 (2) that supervisory unions are complying with the Individuals with  
15 Disabilities Education Act, 20 U.S.C. chapter 33.

16 Sec. 8. 2018 Acts and Resolves No. 173, Sec. 17 is amended to read:

17 Sec. 17. TRANSITION

18 (a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a  
19 supervisory union to submit a service plan to the Secretary of Education,  
20 a supervisory union shall not be required to submit a service plan for fiscal  
21 year ~~2021~~ 2022.



1 (b) On or before November 1, ~~2019~~ 2020, a supervisory union shall submit  
2 to the Secretary such information as required:

3 (1) by the Secretary to estimate the supervisory union's projected fiscal  
4 year ~~2021~~ 2022 extraordinary special education reimbursement under Sec. 5 of  
5 this act; and

6 (2) for IDEA reporting in a format specified by the Secretary.

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

10 Sec. 9. 2018 Acts and Resolves No. 173, Sec. 18 is amended to read:

11 Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION

12 COSTS

13 \* \* \*

14 (b) This section is repealed on July 1, ~~2020~~ 2021.

15 Sec. 10. 2018 Acts and Resolves No. 173, Sec. 23 is amended to read:

16 Sec. 23. EFFECTIVE DATES

17 \* \* \*

18 (b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, ~~2020~~ 2021.

19 \* \* \*

1                   \* \* \* State Advisory Panel on Special Education \* \* \*

2           Sec. 11. 16 V.S.A. § 2945 is amended to read:

3           § 2945. STATE ADVISORY COUNCIL PANEL ON SPECIAL  
4           EDUCATION

5           (a) There is created the Advisory Council on Special Education that shall  
6           consist of 19 members. All members of the Council shall serve for a term of  
7           three years or until their successors are appointed. Terms shall begin on April 1  
8           of the year of appointment. A majority of the members shall be either  
9           individuals with disabilities or parents of children with disabilities.

10           (1) Seventeen of the members shall be appointed by the Governor with  
11           the advice of the Secretary. Among the gubernatorial appointees shall be:

12                   (A) teachers;

13                   (B) representatives of State agencies involved in the financing or  
14           delivery of related services to children with disabilities;

15                   (C) a representative of independent schools;

16                   (D) at least one representative of a vocational, community, or  
17           business organization concerned with the provision of transition services to  
18           children with disabilities;

19                   (E) a representative from the State juvenile and adult corrections  
20           agency;

21                   (F) individuals with disabilities;

1           (G) parents of children with disabilities, provided the child shall be  
2 younger than 26 years old at the time his or her parent is appointed to the  
3 Council;

4           (H) State and local education officials, including officials who carry  
5 out activities under the McKinney Vento Homeless Assistance Act;

6           (I) a representative of higher education who prepares special  
7 education and related services personnel;

8           (J) a representative from the State child welfare department  
9 responsible for foster care;

10           (K) special education administrators; and

11           (L) two at large members.

12           (2) In addition, two members of the General Assembly shall be  
13 appointed, one from the House of Representatives and one from the Senate.  
14 The Speaker shall appoint the House member and the Committee on  
15 Committees shall appoint the Senate member.

16           (b) The Council shall elect its own chair from among its membership. The  
17 Council shall meet annually at the call of the Chair, and other meetings may be  
18 called by the Chair at such times and places as he or she may determine to be  
19 necessary.

20           (e) The members of the Council who are employees of the State shall  
21 receive no additional compensation for their services, but actual and necessary

1 expenses shall be allowed State employees, and shall be charged to their  
2 departments or institutions. The members of the Council who are not  
3 employees of the State shall receive a per diem compensation as provided  
4 under 32 V.S.A. § 1010 for each day of official business and reimbursement  
5 for actual and necessary expenses at the rate allowed State employees.

6 (d) The Council shall:

7 (1) assume all responsibilities required of the State advisory panel by  
8 federal law;

9 (2) review periodically the rules, regulations, standards, and guidelines  
10 pertaining to special education and recommend to the State Board any changes  
11 it finds necessary;

12 (3) comment on any new or revised rules, regulations, standards, and  
13 guidelines proposed for issuance; and

14 (4) advise the State Board in the development of any State plan for  
15 provision of special education.

16 (a) The State Advisory Panel on Special Education (Panel) is created to  
17 provide guidance with respect to special education and related services for  
18 children with disabilities in the State. Members of the Panel shall be appointed  
19 by the Governor, with the advice of the Secretary of Education. The Panel  
20 shall perform the duties, and members of the Panel shall be appointed, in  
21 accordance with federal law. In addition to members appointed to the Panel to

1 satisfy the requirements under federal law, the members of the Panel shall  
2 include a representative of each body designated by the State under federal law  
3 as the Parent Training and Information Center and the Protection and  
4 Advocacy System. The total number of members on the Panel shall not exceed  
5 37 members.

6 (b) The Panel shall elect an executive committee from among its members.  
7 The executive committee shall be composed of seven members of the Panel,  
8 one of whom shall be the chair of the Panel. A majority of the members of the  
9 executive committee shall be individuals with disabilities or parents of children  
10 with disabilities (ages birth through 26 years of age). The executive committee  
11 shall call meetings of the Panel and shall direct the work of the Panel.

12 (c) The Panel shall advise both the Agency of Education and the State  
13 Board of Education on those matters upon which the Panel is required, under  
14 federal law, to advise the State Education Agency.

15 (d) Members of the Panel shall be entitled to per diem compensation and  
16 reimbursement of expenses as permitted under 32 V.S.A. § 1010.

17 **Sec. 12. TRANSITION**

18 (a) On or before August 1, 2019, members shall be appointed to the State  
19 Advisory Panel on Special Education under 16 V.S.A. § 2945 to ensure that  
20 the membership of the Panel complies with federal law, including the  
21 appointment of members who fulfill the requirement that a majority of the

1 members be individuals with disabilities or parents of children with  
2 disabilities.

3 (b) On or before December 1, 2019, the Panel shall, in consultation with  
4 the Agency of Education, review and update its bylaws, and shall include in its  
5 bylaws term limits for all or certain of its members, as the Panel deems  
6 appropriate.

7 \* \* \* Act 46 \* \* \*

8 [FROM SENATE PASSED VERSION OF H.39]

9 Sec. 13. SCHOOL DISTRICT MERGERS; STATE BOARD OF

10 EDUCATION ORDER

11 (a) Statement of intent.

12 (1) 2017 Acts and Resolves No. 49 made “useful changes to the merger  
13 time lines” contained in 2015 Acts and Resolves No. 46 “without weakening or  
14 eliminating the Act’s fundamental phased merger and incentive structures and  
15 requirements.” Act 49 reemphasized this point by noting that “[n]othing in this  
16 act should be interpreted to suggest that it is acceptable for a school district to  
17 fail to take reasonable and robust action to seek to meet the goals of Act 46.”

18 (2) Similarly, nothing in this act, which permits a final extension of the  
19 deadline for mergers required by the State Board of Education, should be  
20 interpreted to weaken or undermine in any way the State Board’s final merger  
21 order of November 28, 2018 or to encourage delay for school districts that

1 want to merge on July 1, 2019. Except as modified by this act, school districts  
2 remain under all obligations under Acts 46 and 49, whether or not they choose  
3 to delay the operational date of their merger.

4 (b) Definitions. As used in this section:

5 (1) “Default Articles” means the Default Articles of Agreement issued  
6 with the State Board Report.

7 (2) “Existing district” means a union school district created by vote of  
8 the electorate on or after July 1, 2014 into which a merging district is ordered  
9 by the State Board Order to merge.

10 (3) “Forming district” means a school district that is ordered by the State  
11 Board Order to merge with other forming districts to create a newly formed  
12 district.

13 (4) “Initial members” mean the initial members of the board of a newly  
14 formed district elected under Article 10 of the default articles.

15 (5) “Merging district” means a school district that is ordered by the State  
16 Board Order to merge into an existing district.

17 (6) “Newly formed district” means a union school district that is formed  
18 by the State Board Order by merging forming districts.

19 (7) “State Board Order” means the section of the State Board Report  
20 entitled “State Board of Education’s ‘order merging and realigning districts  
21 and supervisory unions where necessary pursuant to Act 46, Sec. 10(b).”

1           (8) “State Board Report” means the “Final Report of the Decisions and  
2           Order on Statewide School District Merger Decisions Pursuant to Act 46,  
3           Sections 8(b) and 10” issued by the State Board of Education dated  
4           November 28, 2018.

5           (c) Notwithstanding any provision of law to the contrary:

6           (1) Merger deadline extension.

7           (A) Except as provided in subdivisions (1)(B) and (C) of this  
8           subsection, the operational deadline for school district mergers under the State  
9           Board Order shall be on July 1, 2019 or July 1, 2020.

10           (i) For the mergers of forming districts into a newly formed  
11           district, the school board of the newly formed district, operating in accordance  
12           with the default articles, shall, on or before June 30, 2019, determine, by  
13           majority vote of the initial members representing a quorum, the operational  
14           date of merger.

15           (ii) For the merger of a merging district into an existing district,  
16           the school board of the existing district shall, on or before June 30, 2019,  
17           determine, by majority vote of members representing a quorum, the  
18           operational date of merger.

19           (B) The operational deadline for school district mergers under the  
20           State Board Order shall be on July 1, 2019 if the relevant board does not, on or



1 before June 30, 2019, determine the operational date of the merger under  
2 subdivision (1)(A) of this subsection.

3 (C) The deadline for mergers that, in the State Board Order, are  
4 conditioned upon approval of voters of the existing district shall be as specified  
5 in the State Board Order.

6 (2) Default Articles. The Default Articles for each newly formed  
7 district that has an operational deadline of July 1, 2020 are amended as  
8 follows:

9 (A) by striking out the date “June 30, 2019” wherever it appears and  
10 inserting in lieu thereof the date “June 30, 2020”;

11 (B) by striking out the date “July 1, 2019” wherever it appears and  
12 inserting in lieu thereof the date “July 1, 2020”; provided, however, the date  
13 “July 1, 2019” shall not be changed in Article 9;

14 (C) by striking out the date “December 31, 2019” wherever it appears  
15 and inserting in lieu thereof the date “December 31, 2020”;

16 (D) by striking out the date “July 1, 2020” wherever it appears and  
17 inserting in lieu thereof the date “July 1, 2021”;

18 (E) by striking out the academic year “2019–2020” wherever it  
19 appears and inserting in lieu thereof the academic year “2020–2021”;

20 (F) by striking out the academic year “2020–2021” wherever it  
21 appears and inserting in lieu thereof the academic year “2021–2022”;

1           (G) by striking out the academic year “2021–2022” wherever it  
2           appears and inserting in lieu thereof the academic year “2022–2023”; and

3           (H) by striking out the fiscal year “2020” wherever it appears and  
4           inserting in lieu thereof the fiscal year “2021”.

5           (3) Small schools grant.

6           (A) If a forming district or merging district that merges under the  
7           State Board Order has an operational merger date of July 1, 2019, and that  
8           district was an “eligible school district” as defined in 16 V.S.A. § 4015, as in  
9           effect on June 30, 2019, that received a small schools support grant under that  
10          section in the fiscal year two years prior to the first fiscal year of merger, then  
11          the newly formed district or existing district, as applicable, shall receive an  
12          annual small schools support grant in an amount equal to the small schools  
13          support grant received by the forming district or merging district, as applicable,  
14          in the fiscal year two years prior to the first fiscal year of merger. If more than  
15          one forming district or merging district was an eligible school district and  
16          merged into the same newly formed district or existing district, as applicable,  
17          then the small schools support grant for the newly formed district or existing  
18          district, as applicable, shall be in an amount equal to the total combined small  
19          schools support grants the forming districts or the merging districts, as  
20          applicable, received in the fiscal year two years prior to the first fiscal year of  
21          merger.

1           (B) Payment of the grant under subdivision (3)(A) of this subsection  
2           shall continue annually unless explicitly repealed by the General Assembly;  
3           provided, however, that the Secretary shall discontinue payment of the grant in  
4           the fiscal year following closure by the school district of a school that qualified  
5           the district for the grant; and further provided that if a school building that  
6           housed a school that qualified the district for the grant is closed in order to  
7           consolidate with another school into a renovated or new school building, then  
8           the Secretary shall continue to pay the grant during the repayment term of any  
9           bonded indebtedness incurred in connection with the consolidation-related  
10           renovation or construction.

11           (4) Union school district budget.

12           (A) If the first budget of a newly formed district has not been  
13           approved by voters on or before June 30 for the 2020 or 2021 fiscal year, the  
14           Agency of Education shall authorize an amount of education spending for that  
15           newly formed district equal to:

16                   (i) the cumulative education spending amount authorized by the  
17                   most recently voter approved school budgets of the forming districts;  
18                   multiplied by

19                   (ii) the percentage that represents the average statewide increase  
20                   from the prior fiscal year to the current fiscal year in school district education  
21                   spending authorized by voter approved school district budgets, based on data

1 received by the Agency of Education on or before June 14 of the prior fiscal  
2 year. As used in this subdivision (ii), for mergers under the State Board Order  
3 that are operational on July 1, 2019, the prior fiscal year shall be fiscal year  
4 2019 and the current fiscal year shall be fiscal year 2020, and for mergers  
5 under the State Board Order that are operational on July 1, 2020, the prior  
6 fiscal year shall be fiscal year 2020 and the current fiscal year shall be fiscal  
7 year 2021.

8 (B) The amount authorized by the Agency of Education under  
9 subdivision (4)(A) of this subsection shall be the “education spending” of the  
10 newly formed district for the relevant fiscal year under 16 V.S.A. chapter 133.

11 (C) The school board of the newly formed district, operating in  
12 accordance with the default articles, shall determine how funds shall be  
13 expended in the relevant fiscal year under this subdivision (4). In addition, the  
14 school board of the newly formed district shall have the authority to expend  
15 any other funds received from other sources in the relevant fiscal year under  
16 this subdivision (4), including endowments, parental fundraising, federal  
17 funds, nongovernmental grants, or other State funds such as special education  
18 funds paid under 16 V.S.A. chapter 101.

19 Sec. 14. 16 V.S.A. § 4015 is amended to read:

20 § 4015. SMALL SCHOOL SUPPORT

21 (a) In this section:

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\* \* \*

(2) “Enrollment” means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student. Students enrolled in prekindergarten programs shall not be counted.

\* \* \*

\* \* \* Effective Dates \* \* \*

**Sec. 15. EFFECTIVE DATES**

Secs. 1, 2, 6–13 and this section shall take effect on passage. Secs. 3–5 shall take effect on July 1, 2021. Sec. 14 (small school support) shall take effect on July 1, 2019.