

1 **Mark-up to show date changes**

2
3 **No. 173. An act relating to enhancing the effectiveness, availability, and**
4 **equity of services provided to students who require additional support.**

5 (H.897)

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 * * * Findings * * *

8 Sec. 1. FINDINGS

9 (a) In 2016 Acts and Resolves No. 148, the General Assembly directed the
10 Agency of Education to contract with a consulting firm to review current
11 practices and recommend best practices for the delivery of special education
12 services in school districts. The Agency of Education contracted with the
13 District Management Group, which issued in November 2017 its report entitled
14 “Expanding and Strengthening Best-Practice Supports for Students who
15 Struggle” (Delivery of Services Report).

16 (b) In Act 148, the General Assembly also directed the Agency of
17 Education to contract for a study of special education funding and practice and
18 to recommend a funding model for Vermont designed to provide incentives for
19 desirable practices and stimulate innovation in the delivery of services. The
20 General Assembly required that the study consider a census-based model of
21 funding. The Agency of Education contracted with the University of Vermont

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

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

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

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

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

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

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

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

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

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

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

6 (4) discourages cost containment; and

7 (5) is unpredictable and lacks transparency.

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

18 (f) The General Assembly agrees with the findings in the Delivery of
19 Services Report and with the advantages of moving to a census-based special
20 education funding model as described in the Funding Report. The General
21 Assembly recognizes that changing the models for delivery of services and

1 funding for students who require additional support is a significant change for
2 school systems and their constituencies, and that they will require time and
3 assistance in making necessary adjustments.

4 * * * Goals * * *

5 Sec. 2. GOALS

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

9 (b)(1) To support the enhanced delivery of these services, the State funding
10 model for special education shall change for all supervisory unions in fiscal
11 year ~~2021~~ 2022, for school year ~~2020-2021~~ 2021-2022, from a reimbursement
12 model to a census-based model, which will provide more flexibility in how the
13 funding can be used, is aligned with the State's policy priorities of serving
14 students who require additional support across the general and special
15 education service-delivery systems, and will simplify administration.

16 (2) The General Assembly recognizes that a student on an
17 individualized education program is entitled, under federal law, to a free and
18 appropriate public education in the least restrictive environment in accordance
19 with that program. The changes to State funding for special education and the
20 delivery of special education services as envisioned under this act are intended
21 to facilitate the exercise of this entitlement.

1 (c) The General Assembly recognizes that it might be appropriate and
2 equitable to provide a higher amount of census-based funding to supervisory
3 unions that have relatively higher costs in supporting students who require
4 additional support, but the General Assembly does not have sufficient
5 information on which to base this determination. Therefore, this act directs the
6 Agency of Education to make a recommendation to the General Assembly on
7 whether the amount of the census grant should be increased for supervisory
8 unions that have relatively higher costs in supporting students who require
9 additional support, and if so, the criteria for qualification for the adjustment
10 and the manner in which the adjustment should be applied. The General
11 Assembly intends to reconsider this matter after receiving this recommendation
12 and before the census-based model is implemented.

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

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

19 § 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL

20 EDUCATION ENVIRONMENT

1 (a) ~~It is the policy of the State that each~~ Each local school district shall
2 develop and maintain, in consultation with parents, a comprehensive system of
3 education that ~~will~~ is designed to result, to the extent appropriate, in all
4 students succeeding in the general education environment. A comprehensive
5 system of education includes a full range of services and accommodations that
6 are needed by students in the district. These services could include a separate
7 alternative program if the district finds that some of its students could be better
8 served in an environment outside the classroom, or if the district finds that
9 separate placement is the best way to provide services to a student who is
10 ~~disrupting the class or~~ having difficulty learning in a traditional school setting
11 for educational, emotional, or personal reasons and thereby impairing the
12 ability of the classroom teacher to provide ~~quality~~ high-quality services to that
13 student or to other students. This chapter does not replace or expand
14 entitlements created by federal law, nor is it the intent of this chapter to create
15 a higher standard for maintaining a student in the general classroom than the
16 standard created in the following federal laws: ~~20 U.S.C. § 1401 et seq.~~
17 chapter 33, Individuals with Disabilities Education Act; 29 U.S.C. § 794,
18 Section 504 of the Rehabilitation Act of 1973; and ~~42 U.S.C. § 12101 et seq.~~
19 chapter 126, Americans with Disabilities Act.

20 (b) [Repealed.]

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

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

4 § 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL
5 SUPPORT TEAM

6 (a) Within each school district's comprehensive system of educational
7 services, each public school shall develop and maintain a tiered system of
8 academic and behavioral supports for the purpose of providing all students
9 with the opportunity to succeed or to be challenged in the general education
10 environment. For each school it maintains, a school district board shall assign
11 responsibility for developing and maintaining the tiered system of supports
12 either to the superintendent pursuant to a contract entered into under section
13 267 of this title or to the school principal. The school shall provide all students
14 a full and fair opportunity to access the system of supports and achieve
15 educational success. The tiered system of supports shall, at a minimum,
16 include an educational support team, instructional and behavioral
17 interventions, and accommodations that are available as needed for any student
18 who requires support beyond what can be provided in the general education
19 classroom, and may include intensive, individualized interventions for any
20 student requiring a higher level of support.

21 (b) The tiered system of supports shall:

- 1 (1) be aligned as appropriate with the general education curriculum;
- 2 (2) be designed to enhance the ability of the general education system to
3 meet the needs of all students;
- 4 (3) be designed to provide necessary supports promptly, regardless of an
5 individual student's eligibility for categorical programs;
- 6 (4) seek to identify and respond to students in need of support for ~~at-risk~~
7 ~~behaviors~~ emotional or behavioral challenges and to students in need of
8 specialized, individualized behavior supports; ~~and~~
- 9 (5) provide all students with a continuum of evidence-based ~~and~~
10 ~~research-based behavior~~ positive behavioral practices that ~~teach and encourage~~
11 ~~prosocial skills and behaviors schoolwide~~ promote social and emotional
12 learning, including trauma-sensitive programming, that are both school-wide
13 and focused on specific students or groups of students;
- 14 (6) promote collaboration with families, community supports, and the
15 system of health and human services; and
- 16 (7) provide professional development, as needed, to support all staff in
17 full implementation of the multi-tiered system of support.
- 18 (c) The educational support team for each public school in the district shall
19 be composed of staff from a variety of teaching and support positions and
20 shall:

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

6 (2) Identify the classroom accommodations, remedial services, and other
7 supports ~~that have been~~ to be provided to the identified student.

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

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

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

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

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

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

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

17 (g) The tiered system of academic and behavioral supports required under
18 this section shall not be used by a school district to deny a timely initial
19 comprehensive special education evaluation for children suspected of having a
20 disability. The Agency of Education shall adopt policies and procedures to
21 ensure that a school district's evaluation of a child suspected of having a

1 disability is not denied because of implementation of the tiered system of
2 academic and behavioral supports. The policies and procedures shall include:

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

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

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

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

9 Education Laws * * *

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

11 CHAPTER 101. SPECIAL EDUCATION

12 Subchapter 1. General Provisions

13 § 2941. POLICY AND PURPOSE

14 It is the policy of the State to ensure equal educational opportunities for all
15 children in Vermont. This means that children with disabilities are entitled to
16 receive a free appropriate public education. ~~It is further the policy of the State~~
17 ~~to pay 60 percent of the statewide costs expended by public education for~~
18 ~~children with disabilities.~~ The purpose of this chapter is to enable the Agency
19 to ensure the provision of ~~the special educational facilities and instruction~~
20 education services and supports in accordance with individualized education
21 programs necessary to meet the needs of children with disabilities.

1 § 2942. DEFINITIONS

2 As used in this chapter

3 * * *

4 (8) A “student who requires additional support” means a student:

5 (A) who is on an individualized education program;

6 (B) who is on a section 504 plan under the Rehabilitation Act
7 of 1973, 29 U.S.C. § 794;

8 (C) who is not on an individualized education program or section 504
9 plan but whose ability to learn is negatively impacted by a disability or by
10 social, emotional, or behavioral needs, or whose ability to learn is negatively
11 impacted because the student is otherwise at risk;

12 (D) for whom English is not the primary language; or

13 (E) who reads below grade level.

14 * * *

15 Subchapter 2. Aid for Special Education and Support Services

16 § 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ CENSUS GRANT

17 (a) ~~Each supervisory union shall be eligible to receive a standard~~
18 ~~mainstream block grant each school year. The mainstream block grant shall be~~
19 ~~equal to the supervisory union’s mainstream salary standard multiplied by~~
20 ~~60 percent.~~

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

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

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

8 ~~(A) the supervisory union’s full time equivalent staffing for special~~
9 ~~education for the preceding year multiplied by the average special education~~
10 ~~teacher salary in the State for the preceding year; plus~~

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

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

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

9 As used in this section:

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

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

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

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

20 (A) dividing an amount:

1 (i) equal to the average State appropriation for fiscal years ~~2018,~~
2 ~~2019, and 2020~~ 2019, 2020, and 2021 for special education under 16 V.S.A.
3 §§ 2961 (standard mainstream block grants), 2963 (special education
4 expenditures reimbursement), and 2963a (exceptional circumstances); and

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

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

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

13 (c) Each supervisory union shall receive a census grant each fiscal year to
14 support the provision of special education services to students on an
15 individualized education program. Supervisory unions shall use this funding
16 and other available sources of funding to provide special education services to
17 students in accordance with their individualized education programs as
18 mandated under federal law. A supervisory union may use census grant funds
19 to support the delivery of the supervisory union’s comprehensive system of
20 educational services under sections 2901 and 2902 of this title, but shall not
21 use census grant funds in a manner that abrogates its responsibility to provide

1 special education services to students in accordance with their individualized
2 education programs as mandated under federal law.

3 (d)(1)(A) For fiscal year ~~2021~~ 2022, the amount of the census grant for a
4 supervisory union shall be:

5 (i) the average amount it received for fiscal years ~~2017, 2018, and~~
6 ~~2019~~ 2018, 2019, and 2020 from the State for special education under sections
7 2961 (standard mainstream block grants), 2963 (special education expenditures
8 reimbursement), and 2963a (exceptional circumstances) of this title;
9 increased by

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

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

18 (2) For fiscal year ~~2025~~ 2026 and subsequent fiscal years, the amount of
19 the census grant for a supervisory union shall be the uniform base amount
20 multiplied by the supervisory union's long-term membership.

1 (3) For fiscal years 2022, 2023, 2024, and 2025, the amount of the
2 census grant for a supervisory union shall be determined by multiplying the
3 supervisory union's long-term membership by a base amount established under
4 this subdivision. The base amounts for each supervisory union for fiscal years
5 2022, 2023, 2024, and 2025 shall move gradually the supervisory union's
6 fiscal year 2021 2022 base amount to the fiscal year 2025 2026 uniform base
7 amount by pro rating the change between the supervisory union's fiscal year
8 2021 2022 base amount and the fiscal year 2025 2026 uniform base amount
9 over this three-fiscal-year period.

10 § 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION

11 REIMBURSEMENT

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

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

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

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

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

18 (3) The State Board of Education shall define allowable special
19 education expenditures that shall include any expenditures required under
20 federal law in order to implement fully individual education programs under

1 the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, and any
2 costs of mediation conducted by a mediator who is approved by the Secretary.

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

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

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

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

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

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

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

19 (iii) 60 percent.

20 (d) The State Board of Education shall establish by rule the administrative
21 process for supervisory unions to submit claims for extraordinary

1 reimbursement under this section and for the review and payment of those
2 claims.

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

15 § 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

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

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

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

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

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

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

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

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

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

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

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

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

4 § 2963a. ~~EXCEPTIONAL CIRCUMSTANCES~~

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

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

1 § 2964. SERVICE PLAN

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

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

13 * * *

14 § 2967. AID PROJECTION; STATE SHARE

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

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

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

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

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

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

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

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

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

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

13 § 2968. **REPORTS**

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

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

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

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

19 § 2969. PAYMENTS

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

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

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

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

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

5 (b) [Repealed.]

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

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

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

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

6 * * *

7 § 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

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

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

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

16 (3) results for special education students;

17 (4) the availability of special education staff;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 * * * Technical and Conforming Changes * * *

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

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

14 * * *

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

20 * * *

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

2 Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

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

6 (b) Membership. The Advisory Group shall be composed of the following
7 14 members:

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

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

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

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

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

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

20 (7) the Secretary of Education or designee;

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

2 Association who is a special education teacher;

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

4 Business Officials;

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

6 Project;

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

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

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

10 for Disability Rights;

11 (12) the Commissioner of the Vermont Department of Mental Health or

12 designee;

13 (13) one member who represents an approved independent school

14 selected by the Council of Independent Schools; and

15 (14) one member selected by the Vermont Council of Special Education

16 Administrators who is a special education teacher and who teaches in a school

17 that is located in a different county than the special education teacher selected

18 by the Vermont-National Education Association under subdivision (8) of this

19 subsection.

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

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

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

6 (3) recommend to the General Assembly any statutory changes it
7 determines are necessary or advisable to meet the goals of this act, including
8 any statutory changes necessary to align special education funding for
9 approved independent schools with the census grant funding model for public
10 schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of
11 this act.

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

14 (e) Meetings.

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

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

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

20 (4) The Advisory Group shall cease to exist on June 30, 2022.

1 (f) Reports. On or before January 15, 2019, the Advisory Group shall
2 submit a written report to the House and Senate Committees on Education and
3 the State Board of Education with its findings and recommendations on the
4 development of proposed rules to implement this act and any recommendations
5 for legislation. On or before January 15 of 2020, 2021, and 2022, the Advisory
6 Group shall submit a supplemental written report to the House and Senate
7 Committees on Education and the State Board of Education with a status of
8 implementation under this act and any recommendations for legislation.

9 (g) Reimbursement. Members of the Advisory Group who are not
10 employees of the State of Vermont and who are not otherwise compensated or
11 reimbursed for their attendance shall be entitled to per diem compensation and
12 reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than
13 eight meetings per year.

14 (h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year
15 2018 from the General Fund to the Agency of Education to provide funding for
16 per diem compensation and reimbursement under subsection (g) of this section.
17 The Agency shall include in its budget request to the General Assembly for
18 each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide
19 funding for per diem compensation and reimbursement under subsection (g) of
20 this section.

1 * * * Census Grant Supplemental Adjustment;

2 Pupil Weighting Factors; Report * * *

3 Sec. 10. REPEAL

4 2017 Acts and Resolves No. 49, Sec. 35 (education weighting report) is
5 repealed.

6 Sec. 11. CENSUS GRANT SUPPLEMENTAL ADJUSTMENT; PUPIL
7 WEIGHTING FACTORS; REPORT

8 (a) The Agency of Education, in consultation with the Secretary of Human
9 Services, the Vermont Superintendents Association, the Vermont School
10 Boards Association, and the Vermont-National Education Association, shall
11 consider and make recommendations on the following:

12 (1) Whether the census grant, as defined in the amendment to 16 V.S.A.
13 § 2961 in Sec. 5 of this act, should be increased for supervisory unions that
14 have, in any year, relatively higher costs in supporting students who require
15 additional support, and if so, the criteria for qualification for the adjustment
16 and the manner in which the adjustment should be applied. In making this
17 recommendation, the Agency of Education shall consider the report entitled
18 “Study of Vermont State Funding for Special Education” issued in December
19 2017 by the University of Vermont Department of Education and Social
20 Services.

1 (2) Methods, other than the use of per pupil weighting factors, that
2 would further the quality and equity of educational outcomes for students.

3 (3) The criteria used for determining weighted long-term membership of
4 a school district under 16 V.S.A. § 4010, including each of the following:

5 (A) The current weighting factors and any supporting evidence or
6 basis in the historical record for these factors.

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

9 (C) Whether any of the weighting factors, including the weighting
10 factors for students from economically deprived backgrounds and for students
11 for whom English is not the primary language, should be modified, and if so,
12 how the weighting factors should be modified and whether the modification
13 would further the quality and equity of educational outcomes for students.

14 (D) Whether to add any weighting factors, including a school district
15 population density factor and a factor for students who attend regional career
16 technical education centers, and if so, why the weighting factor should be
17 added and whether the weighting factor would further the quality and equity of
18 educational outcomes for students. In considering whether to recommend the
19 addition of a school district population density factor, the Agency of Education
20 shall consider the practices of other states, information from the National

1 Conference of State Legislatures, and research conducted by higher education
2 institutions working on identifying rural or urban education financing factors.

3 (b) On or before November 1, 2019, the Agency of Education shall submit
4 a written report to the House and Senate Committees on Education, the House
5 Committee on Ways and Means, and the Senate Committee on Finance with its
6 findings and any recommendations.

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

9 (d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the
10 sum of \$250,000.00 is appropriated for fiscal year 2018 from the Education
11 Fund to the Agency of Education to provide funding for the purposes set forth
12 in this section. The Agency of Education shall contract with a contractor with
13 expertise in Vermont's education funding system to assist the Agency in
14 producing the study required by this section. Any application of funds for the
15 purpose of administrative overhead shall be capped at ten percent of the total
16 sum allocated pursuant to this subsection.

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

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

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

17 * * * Agency of Education; Staffing * * *

18 Sec. 13. AGENCY OF EDUCATION; STAFFING

19 The following positions are created in the Agency of Education: one full-
20 time, exempt legal counsel specializing in special education law and two full-
21 time, classified positions specializing in effective instruction for students who

1 require additional support. There is appropriated to the Agency of Education
2 from the General Fund for fiscal year 2019 the amount of \$325,000.00 for
3 salaries, benefits, and operating expenses.

4 * * * Extraordinary Services Reimbursement * * *

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

6 § 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

7 (a) Except as otherwise provided in this subchapter, extraordinary services
8 reimbursement shall be payable, based on where the related cost is incurred, to
9 a town school district, city school district, union school district, unified union
10 school district, incorporated school district, the member school districts of an
11 interstate school district, ~~and~~ an unorganized town or gore or to a supervisory
12 union.

13 (b) The amount of extraordinary services reimbursement provided to each
14 district or supervisory union shall be equal to ~~90~~ 95 percent of its extraordinary
15 special education expenditures.

16 (c) As used in this subchapter, “extraordinary special education
17 expenditures” means a school district’s or supervisory union’s allowable
18 expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal
19 year. In this subsection, child means a student with disabilities who is three
20 years of age or older in the current school year. The State Board shall define
21 allowable expenditures that shall include any expenditures required under

1 federal law, and any costs of mediation conducted by a mediator who is
2 approved by the Secretary.

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

4 § 4001. DEFINITIONS

5 As used in this chapter:

6 * * *

7 (6) “Education spending” means the amount of the school district
8 budget, any assessment for a joint contract school, career technical center
9 payments made on behalf of the district under subsection 1561(b) of this title,
10 and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is
11 paid for by the school district, but excluding any portion of the school budget
12 paid for from any other sources such as endowments, parental ~~fund raising~~
13 fundraising, federal funds, nongovernmental grants, or other State funds such
14 as special education funds paid under chapter 101 of this title.

15 (A) [Repealed.]

16 (B) For purposes of calculating excess spending pursuant to
17 32 V.S.A. § 5401(12), “education spending” shall not include:

18 * * *

19 (v) Spending attributable to the district’s share of special
20 education spending ~~in excess of \$50,000.00~~ that is not reimbursed as an

1 extraordinary reimbursement under section 2962 of this title for any one
2 student in the fiscal year occurring two years prior.

3 * * *

4 * * * Rulemaking * * *

5 Sec. 16. RULEMAKING

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

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

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

* * * Transition * * *

Sec. 17. TRANSITION

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

(b) On or before November 1, ~~2019~~ 2020, a supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union's projected fiscal year ~~2021~~ 2022 extraordinary special education reimbursement under Sec. 5 of this act.

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

Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION

COSTS

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

(1) The allowable cost that a local education agency may claim includes a school period or service block during which the staff member identified in

1 this subsection is providing special education services to a group of eight or
2 fewer students, and not less than 25 percent of the students are receiving the
3 special education services, in accordance with their individualized education
4 programs.

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

10 (A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973,
11 29 U.S.C. § 794; or

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

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

15 * * * Approved Independent Schools * * *

16 Sec. 19. FINDINGS AND GOALS

17 (a) The General Assembly created the Approved Independent Schools
18 Study Committee in 2017 Acts and Resolves No. 49 to consider and make
19 recommendations on the criteria to be used by the State Board of Education for
20 designation of an "approved" independent school. The Committee was
21 specifically charged to consider and make recommendations on:

1 (b) Approved independent schools. On application, the State Board shall
2 approve an independent school that offers elementary or secondary education
3 if it finds, after opportunity for hearing, that the school provides a minimum
4 course of study pursuant to section 906 of this title and that it substantially
5 complies with the Board's rules for approved independent schools. Except as
6 provided in subdivision (6) of this subsection, the Board's rules must at
7 minimum require that the school ~~has~~ have the resources required to meet its
8 stated objectives, including financial capacity, faculty who are qualified by
9 training and experience in the areas in which they are assigned, and physical
10 facilities and special services that are in accordance with any State or federal
11 law or regulation. Approval may be granted without State Board evaluation in
12 the case of any school accredited by a private, State, or regional agency
13 recognized by the State Board for accrediting purposes.

14 * * *

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

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

4 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

1 complies with all statutory requirements for approved independent schools and
2 the Board's rules for approved independent schools. An independent school
3 that intends to accept public tuition shall be approved by the State Board only
4 on the condition that the school agrees, notwithstanding any provision of law
5 to the contrary, to enroll any student who requires special education services
6 and who is placed in or referred to the approved independent school as an
7 appropriate placement and least restrictive environment for the student by the
8 student's individualized education program team or by the local education
9 agency; provided, however, that this requirement shall not apply to an
10 independent school that limits enrollment to students who are on an
11 individualized education program or a plan under Section 504 of the
12 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
13 a written agreement between the local education agency and the school.
14 Except as provided in subdivision (6) of this subsection, the Board's rules must
15 at minimum require that the school have the resources required to meet its
16 stated objectives, including financial capacity, faculty who are qualified by
17 training and experience in the areas in which they are assigned, and physical
18 facilities and special services that are in accordance with any State or federal
19 law or regulation. Approval may be granted without State Board evaluation in
20 the case of any school accredited by a private, State, or regional agency
21 recognized by the State Board for accrediting purposes, provided that the State

1 Board shall determine that the school complies with all student enrollment
2 provisions required by law.

3 * * *

4 Sec. 21. 16 V.S.A. § 2973 is amended to read:

5 § 2973. INDEPENDENT ~~SCHOOL TUITION RATES~~ SCHOOLS

6 (a)(1) Notwithstanding any provision of law to the contrary, an approved
7 independent school that accepts public tuition shall enroll any student with an
8 individualized education program who requires special education services and
9 who is placed in the approved independent school as an appropriate placement
10 and least restrictive environment for the student by the student's individualized
11 education program team or by the local education agency (LEA); provided,
12 however, that this requirement shall not apply to an independent school that
13 limits enrollment to students who are on an individualized education program
14 or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794,
15 and who are enrolled pursuant to a written agreement between the LEA and the
16 school.

17 (2) In placing a student with an independent school under subdivision
18 (1) of this subsection, the student's individualized education program team and
19 the LEA shall comply with all applicable federal and State requirements.

20 (3) An approved independent school is not required to demonstrate that
21 it has the resources to serve every category of special education as defined

1 under State Board of Education rules in order to be approved or retain its
2 approval to receive public funding for general tuition.

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

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

13 (2)(A) The Secretary of Education shall set, after consultation with
14 independent schools in Vermont, and based on the level of services provided
15 by the schools, the maximum rates to be paid by the Agency and supervisory
16 unions or school districts for tuition, room, and board for residential placement
17 of students who require special education services. The amount charged by an
18 independent school for tuition shall reflect the school’s actual or anticipated
19 costs of providing special education services to the student and shall not
20 exceed the maximum rates set by the Secretary, provided that the Secretary

1 may permit charges in excess of these maximum rates where the Secretary
2 deems warranted.

3 (B)(i) An approved independent school that enrolls a student under
4 subdivision (a)(1) of this section may bill the responsible LEA for excess
5 special education costs incurred by the independent school in providing special
6 education services beyond those covered by general tuition. Reimbursement of
7 these excess special education costs shall be based on the direct-cost rates
8 approved by the Secretary for services actually provided to the student
9 consistent with the Agency of Education Technical Manual for special
10 education cost accounting. The Agency of Education shall publish specific
11 elements that must be included as part of an independent school's invoice for
12 excess special education costs, and these elements shall be included in the
13 written agreement required under subdivision (c)(2) of this section.

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

19 (iii) An approved independent school that enrolls a student under
20 subdivision (a)(1) of this section shall provide such documentation to the
21 Secretary as the Secretary deems necessary in order to ensure that amounts

1 payable under this subdivision (B) to the school are reasonable in relation to
2 the special education services provided by the school. The Secretary may
3 withhold, or direct an LEA to withhold, payment under this subdivision
4 pending the Secretary's receipt of required documentation under this
5 subdivision, or may withhold, or direct an LEA to withhold, an amount
6 determined by the Secretary as not reasonable in relation to the special
7 education services provided by the school.

8 (C)(i) The Secretary shall set, after consultation with independent
9 schools in Vermont, the maximum tuition rates to be paid by the Agency and
10 supervisory unions or school districts to independent schools that limit
11 enrollment to students who are on an IEP or a plan under Section 504 of the
12 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
13 a written agreement between the LEA and the school. The maximum tuition
14 rates shall be based on the level of services provided by the school.

15 (ii) The tuition rates established by the Secretary under this
16 subdivision (C) shall be no more than the costs that are reasonably related to
17 the level of services provided by the school and shall be set forth on a form
18 prescribed for that purpose by the Secretary of Education. The Secretary shall
19 determine the relationship between costs and the level of services by using
20 generally accepted accounting principles, such as those set forth in the
21 Handbook (II) for Financial Accounting of Vermont School Systems.

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

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

7 (A) demonstrating an understanding of special education
8 requirements, including the:

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

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

13 (iii) characteristics and educational needs associated with any of
14 the categories of disability or suspected disability under federal and State
15 law; and

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

18 (B) committing to implementing the IEP of an enrolled student with
19 special education needs, providing the required services, and appropriately
20 documenting the services and the student's progress;

1 (C) employing or contracting with staff who have the required
2 licensure to provide special education services;

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

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

5 (ii) services provided under the IEP and recommendations for a
6 change in the services provided;

7 (iii) the student's progress;

8 (iv) the maintenance of the student's enrollment in the
9 independent school; and

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

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

13 (2) An approved independent school that enrolls a student requiring
14 special education services who is placed with the school under subdivision
15 (a)(1) of this section:

16 (A) shall enter into a written agreement with the LEA committing to
17 the requirements under subdivision (1) of this subsection (c); and

18 (B) shall ensure that qualified school personnel attend planning
19 meetings and IEP meetings for the student.

20 (d)(1) If a student is placed with an approved independent school under
21 subsection (a) of this section and either the LEA and the school each certifies,

1 or the hearing officer under subdivision (3) of this subsection certifies, to the
2 Secretary of Education that the school is unable to provide required IEP
3 services due to its inability to retain qualified staff, then the LEA shall make
4 another placement that satisfies the federal requirements to provide the student
5 with a free and appropriate public education in the least restrictive
6 environment.

7 (2) If the conditions in subdivision (1) of this subsection are satisfied:

8 (A) the approved independent school shall not be subject to any
9 disciplinary action or the revocation of its approved status by the State Board
10 of Education due to its failure to enroll the student; and

11 (B) no private right of action shall be created on the part of the
12 student or his or her family members, or any other private party, to:

13 (i) require the LEA to place the student with the approved
14 independent school or the school to enroll the student; or

15 (ii) hold the LEA or the approved independent school responsible
16 for monetary damages due to the failure of the school to enroll the student or
17 the necessity for the LEA to make an alternative placement.

18 (3) If the LEA and approved independent school do not agree on
19 whether the school is unable to retain qualified staff under subdivision (1) of
20 this subsection, then the LEA and the school shall jointly contract with a
21 hearing officer to conduct a hearing with the parties and make a determination,

1 which shall be final. The cost for the hearing officer shall be split evenly
2 between the two parties.

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

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

12 Sec. 22. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR
13 SPECIAL EDUCATION CATEGORIES

14 (a) On or before November 1, 2019, the Vermont Standards Board for
15 Professional Educators shall review its special educator endorsement
16 requirements and initiate rulemaking to update its rules to ensure that these
17 requirements do not serve as a barrier to satisfying statewide demands for
18 licensed special educators.

19 (b) On or before November 1, 2020, the State Board of Education shall
20 review its rules for approving independent schools in specific special education

1 categories and initiate rulemaking to update its rules to simplify and expedite
2 the approval process.

3 * * * Effective Dates * * *

4 Sec. 23. EFFECTIVE DATES

5 (a) The following sections shall take effect on July 1, 2019:

6 (1) Sec. 14 (extraordinary services reimbursement);

7 (2) Sec. 15 (16 V.S.A. § 4001); and

8 (3) Sec. 17 (transition).

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

10 (c) Secs. 20a-21 (approved independent schools) shall take effect on July 1,
11 2022.

12 (d) This section and the remaining sections shall take effect on passage.

13