

1 H.483

2 Introduced by Committee on Education

3 Date:

4 Subject: Education; approved independent schools; tuition

5 Statement of purpose of bill as introduced: This bill proposes to require
6 approved independent schools to meet specific requirements in order to be
7 approved as eligible to receive public tuition, including (1) agreeing to enroll
8 any student who requires special education services under specific
9 circumstances; (2) reporting attendance, enrollment changes, State-mandated
10 assessment results, and student performance data to a tuitioned student's local
11 education agency; (3) adopting and implementing policies and procedures to
12 comply with the Vermont Public Accommodations Act and the Vermont Fair
13 Employment Practices Act; (4) limiting admissions requirements for publicly
14 tuitioned students; (5) maintaining a tuition rate for publicly tuitioned students
15 that is the same as or lower than the tuition rate for private payer students; and
16 (6) attesting to compliance with all laws and rules applicable to approved
17 independent schools. The bill also proposes to make conforming changes
18 throughout Title 16 based on these new requirements, as well as establishes a
19 moratorium on the approval of new initial applications for approved
20 independent schools.

1 (c) Therefore, in order to fulfill its constitutional requirement to provide
2 public education to its youth, the State permits school districts that do not
3 operate schools (nonoperating school districts) to use public funds to send their
4 resident youth to public schools operated by other school districts or to certain
5 independent schools.

6 (d) In 2020, the Office of the Vermont State Auditor authored a report
7 comparing the statutes and rules applicable to public schools in Vermont to the
8 statutes and rules applicable to Vermont’s independent schools. In a letter
9 dated December 17, 2020, the Secretary of Education provided comments on a
10 draft of the Auditor’s report. In his closing, the Secretary stated, “This
11 evolution in education policy has taken place in the absence of a single,
12 coherent design for the system as a whole. The resulting differences
13 highlighted in this report should not come as a surprise. They should, along
14 with all education statutes and regulations, be examined to determine whether
15 the current framework makes sense, and whether it enables the state to provide
16 all students equal access to a high-quality education.”

17 * * * Approved Independent Schools Eligible to Receive Public Tuition * * *

18 Sec. 2. 16 V.S.A. § 166 is amended to read:

19 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

1 (a) Authority. An independent school may operate and provide elementary
2 education or secondary education if it is either approved or recognized as set
3 forth in this section.

4 (b) Approved independent schools. On application, the State Board shall
5 approve an independent school that offers elementary or secondary education
6 if it finds, after opportunity for hearing, that the school provides a minimum
7 course of study pursuant to section 906 of this title and that it substantially
8 complies with all statutory requirements for approved independent schools and
9 the Board's rules for approved independent schools. ~~An independent school
10 that intends to accept public tuition shall be approved by the State Board only
11 on the condition that the school agrees, notwithstanding any provision of law
12 to the contrary, to enroll any student who requires special education services
13 and who is placed in or referred to the approved independent school as an
14 appropriate placement and least restrictive environment for the student by the
15 student's individualized education program team or by the local education
16 agency; provided, however, that this requirement shall not apply to an
17 independent school that limits enrollment to students who are on an
18 individualized education program or a plan under Section 504 of the
19 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
20 a written agreement between the local education agency and the school. Except
21 as provided in subdivision (6) of this subsection, the Board's rules must at~~

1 minimum require that the school have the resources required to meet its stated
2 objectives, including financial capacity, faculty who are qualified by training
3 and experience in the areas in which they are assigned, and physical facilities
4 and special services that are in accordance with any State or federal law or
5 regulation. Approval may be granted without State Board evaluation in the
6 case of any school accredited by a private, State, or regional agency recognized
7 by the State Board for accrediting purposes, provided that the State Board shall
8 determine that the school complies with all student enrollment provisions
9 required by law.

10 * * *

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

21 * * *

1 (9)(A) An approved independent school that intends to accept public
2 tuition shall be approved by the State Board as eligible to receive public tuition
3 only on the condition that the school complies with the following
4 requirements; provided, however, that this subdivision (9) shall not apply to
5 therapeutic approved independent schools as defined in subdivision 11(36) of
6 this title:

7 (i) the school agrees, notwithstanding any provision of law to the
8 contrary, to enroll any student who requires special education services and who
9 is placed in or referred to the approved independent school as an appropriate
10 placement and least restrictive environment for the student by the student's
11 individualized education program team or by the local education agency;

12 (ii) the school shall provide local education agencies with an
13 attendance report for students attending the school on public tuition at an
14 interval determined by and in a format approved by the Agency;

15 (iii) the school shall provide local education agencies with a report
16 of the academic progress of students attending the school on public tuition at
17 an interval determined by and in a format approved by the Agency;

18 (iv) the school shall provide local education agencies with a report
19 of any enrollment change for students attending the school on public tuition,
20 including withdrawals, suspensions, or expulsions, provided that the school

1 shall notify a local education agency the same school day if the school is
2 considering expelling a publicly tuitioned student;

3 (v) the school has adopted and implemented policies and
4 procedures to comply with the Vermont Public Accommodations Act,
5 9 V.S.A. chapter 139 and the Vermont Fair Employment Practices Act,
6 21 V.S.A. chapter 5, subchapter 6;

7 (vi) the school shall not use an admissions process for publicly
8 tuitioned students that includes interviews, entrance exams, academic history,
9 required campus visits, or consideration of ability to pay for any costs or fees,
10 provided that:

11 (I) the school may set a capacity limit on the number of
12 publicly tuitioned students the school will accept; and

13 (II) the school shall establish a nondiscriminatory selection
14 process, such as a lottery, when the number of publicly tuitioned student
15 applicants exceeds any capacity limits;

16 (vii) the school shall provide the results of all State-mandated
17 assessments of students on public tuition to the Agency of Education, which
18 shall publish the results on its website in a manner consistent with the
19 publication of the same results for public school students;

20 (viii) the school's tuition rate for publicly tuitioned students shall
21 be the same as or lower than the tuition rate for private payer students and both

1 tuition rates shall be published on the school's website and reported to the
2 Agency of Education annually;

3 (ix) publicly tuitioned students shall not be charged an application
4 fee, an academic fee, or any other fees for academic materials; and

5 (x) the school attests on or before August 1 of each year to
6 compliance with the requirements of this subdivision (9), all other statutory
7 requirements for approved independent schools, and the Board's rules for
8 approved independent schools, on a form created by the Agency, including
9 documentation of the following:

10 (I) a statement of nondiscrimination, posted on the school's
11 website and included in the school's application materials, that is consistent
12 with the Vermont Public Accommodations Act, 9 V.S.A. chapter 139 and the
13 Vermont Fair Employment Practices Act, 21 V.S.A. chapter 5, subchapter 6;

14 (II) an assurance, signed by the head of school, that the school
15 complies with the Vermont Public Accommodations Act in all aspects of the
16 school's admissions and operations; and

17 (III) an assurance, signed by the head of school, that no public
18 funds were used to subsidize the tuition of private payer students.

19 (B) No private right of action is created by this subdivision (9)
20 against an approved independent school approved by the State Board as
21 eligible to receive public tuition for failure to comply with any of the

1 requirements in this subdivision (9). The State Board is authorized to use its
2 powers under subdivision (5) of this subsection (b) to revoke, suspend, or
3 impose conditions on the eligibility of an approved independent school to
4 receive public tuition for failure to comply with these requirements. The
5 Board shall establish and maintain a process to receive, investigate, and resolve
6 allegations of noncompliance with these requirements in a manner that
7 provides due process for the person or persons making the allegation and the
8 approved independent school against which the allegation is made. A person
9 shall not coerce, threaten, interfere, or otherwise discriminate against any
10 individual who alleges noncompliance with the requirements under this
11 subdivision (9).

12 * * *

13 * * * Tuition * * *

14 Sec. 3. 16 V.S.A. § 821 is amended to read:

15 § 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY

16 SCHOOLS OR PAY TUITION

17 (a) Each school district shall maintain one or more approved schools within
18 the district in which elementary education for its resident students in
19 kindergarten through grade six is provided unless:

20 * * *

1 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
2 school district that does not maintain an elementary school may grant general
3 authority to the school board to pay tuition for an elementary student at an
4 approved independent elementary school eligible to receive public tuition or an
5 independent school meeting education quality standards pursuant to sections
6 823 and 828 of this chapter upon notice given by the student's parent or legal
7 guardian before April 15 for the next academic year.

8 Sec. 4. 16 V.S.A. § 822 is amended to read:

9 § 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
10 PAY TUITION

11 (a) Each school district shall maintain one or more approved high schools
12 in which high school education is provided for its resident students unless:

13 (1) the electorate authorizes the school board to close an existing high
14 school and to provide for the high school education of its students by paying
15 tuition to a public high school, an approved independent high school eligible to
16 receive public tuition, or an independent school meeting education quality
17 standards, to be selected by the parents or guardians of the student, ~~within or~~
18 ~~outside the State~~; or

19 * * *

20 (c)(1) A school district may both maintain a high school and furnish high
21 school education by paying tuition:

1 (c) The district shall pay an amount not to exceed the average announced
2 tuition of Vermont union high schools for the year of attendance for its
3 students enrolled in an approved independent school eligible to receive public
4 tuition that does not functioning function as a Vermont area career technical
5 center, or any higher amount approved by the electorate at an annual or special
6 meeting warned for that purpose.

7 Sec. 7. 16 V.S.A. § 827 is amended to read:

8 § 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN

9 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC

10 HIGH SCHOOL OF A SCHOOL DISTRICT

11 (a) A school district not maintaining an approved public high school may
12 vote on such terms or conditions as it deems appropriate, to designate three or
13 fewer approved independent schools eligible to receive public tuition or public
14 high schools as the public high school or schools of the district.

15 (b) Except as otherwise provided in this section, if the board of trustees or
16 the school board of a designated school votes to accept this designation, the
17 school shall be regarded as a public school for tuition purposes under
18 subsection 824(b) of this title, and the sending school district shall pay tuition
19 only to that school, and to any other school designated under this section, until
20 such time as the sending school district or the designated school votes to
21 rescind the designation.

1 (c) A parent or legal guardian who is dissatisfied with the instruction
2 provided at a designated school or who cannot obtain for ~~his or her~~ the parent's
3 or legal guardian's child the kind of course or instruction desired there, or
4 whose child can be better accommodated in an approved independent school
5 eligible to receive public tuition or public high school nearer ~~his or her~~ the
6 child's home during the next academic year, may request on or before April 15
7 that the school board pay tuition to another approved independent school
8 eligible to receive public tuition or public high school selected by the parent or
9 guardian.

10 * * *

11 (e) ~~Notwithstanding any other provision of law to the contrary:~~

12 ~~(1) the school districts of Pawlet, Rupert, and Wells may designate a~~
13 ~~public high school located in New York as the public high school of the district~~
14 ~~pursuant to the provisions of this section;~~

15 ~~(2) unless otherwise directed by an affirmative vote of the school~~
16 ~~district, when the Wells Board approves parental requests to pay tuition to a~~
17 ~~nondesignated approved independent or public school, the Board shall pay~~
18 ~~tuition in an amount not to exceed the base education amount as determined~~
19 ~~under section 4011 of this title for the fiscal year in which tuition is being paid;~~
20 ~~and~~

1 ~~(3) unless otherwise directed by an affirmative vote of the school~~
2 ~~district, when the Strafford Board approves a parental request to pay tuition to~~
3 ~~a nondesignated approved independent or public school, the Board shall pay~~
4 ~~tuition to the nondesignated school pursuant to section 824 of this title for the~~
5 ~~year in which the student is enrolled; provided, however, that it shall not pay~~
6 ~~tuition in an amount that exceeds the tuition paid to the designated school for~~
7 ~~the same academic year. [Repealed.]~~

8 Sec. 8. 16 V.S.A. § 828 is amended to read:

9 § 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

10 ~~(a)~~ A school district shall not pay the tuition of a student except to a public
11 school, an approved independent school located in Vermont, an independent
12 school meeting education quality standards, a tutorial program approved by the
13 State Board, an approved education program, a therapeutic school, or an
14 independent school in another state ~~or country~~ located within 25 miles of the
15 Vermont border and approved under the laws of that state ~~or country~~, nor shall
16 payment of tuition on behalf of a person be denied on account of age. Unless
17 otherwise provided, a person who is aggrieved by a decision of a school board
18 relating to eligibility for tuition payments, the amount of tuition payable, or the
19 school ~~he or she~~ the person may attend, may appeal to the State Board and its
20 decision shall be final.

1 (b) An independent school in another state located within 25 miles of the
2 Vermont border that is approved under the laws of that state is eligible to
3 receive public tuition if the following conditions are met:

4 (1) The independent school has adopted and implemented policies and
5 procedures to comply with all antidiscrimination laws applicable to public
6 schools in the state where the independent school is located and makes
7 reasonable efforts to enforce those policies and procedures, even if those laws
8 by their terms do not apply to the independent school. The school shall attest
9 to compliance with this subdivision on or before August 1 of each year.

10 (2) The independent school posts and maintains on its website in a
11 prominent place its policy to comply with all antidiscrimination laws that apply
12 to public schools in the state where the independent school is located. The
13 school shall attest to compliance with this subdivision on or before August 1 of
14 each year.

15 (3) The independent school complies with the requirements of
16 subdivision 166(b)(9) of this title, provided that subdivisions 166(b)(9)(vi) and
17 (xi) of this title shall not apply.

18 (4) The independent school provides an assurance on or before August 1
19 of each year, signed by the head of school, that no public funds were used to
20 subsidize the tuition of private payer students.

21 Sec. 9. 16 V.S.A. § 828 is amended to read:

1 § 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

2 (a) A school district shall not pay the tuition of a student except to a public
3 school, an approved independent school located in Vermont, an independent
4 school meeting education quality standards, a tutorial program approved by the
5 State Board, an approved education program, a therapeutic school, or an
6 independent school in another state located within 25 miles of the Vermont
7 border and approved under the laws of that state, that complies with the
8 reporting requirement under subsection 4010(c) of this title, nor shall payment
9 of tuition on behalf of a person be denied on account of age. Unless otherwise
10 provided, a person who is aggrieved by a decision of a school board relating to
11 eligibility for tuition payments, the amount of tuition payable, or the school the
12 person may attend, may appeal to the State Board and its decision shall be
13 final.

14 * * *

15 Sec. 10. REPEAL

16 2022 Acts and Resolves No. 127, Sec. 21 (16 V.S.A. § 828) is repealed.

17 * * * Dual Enrollment * * *

18 Sec. 11. 16 V.S.A. § 944 is amended to read:

19 § 944. DUAL ENROLLMENT PROGRAM

20 * * *

21 (b) Students.

1 (1) A Vermont resident who has completed grade 10 but has not
2 received a high school diploma is eligible to participate in the Program if:

3 (A) the student:

4 (i) is enrolled in:

5 (I) a Vermont public school, including a Vermont career
6 technical center;

7 (II) a public school in another state or an approved independent
8 school that is designated as the public secondary school for the student's
9 district of residence; or

10 (III) an approved independent school eligible to receive public
11 tuition in Vermont to which the student's district of residence pays publicly
12 funded tuition on behalf of the student;

13 (ii) is assigned to a public school through the High School
14 Completion Program; or

15 (iii) is a home study student;

16 (B) dual enrollment is an element included within the student's
17 personalized learning plan; and

18 (C) the secondary school and the postsecondary institution have
19 determined that the student is sufficiently prepared to succeed in a dual
20 enrollment course, which can be determined in part by the assessment tool or
21 tools identified by the participating postsecondary institution.

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* * * Special Education * * *

Sec. 12. 16 V.S.A. § 11 is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

(a) As used in this title, unless the context otherwise clearly requires:

* * *

(36) “Therapeutic approved independent school” means an approved independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school.

* * *

Sec. 13. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

* * *

(e) Under section 2973 of this title, a supervisory union, in its role as the local education agency, may place a student with an individualized education program under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, with ~~certain~~ approved independent schools ~~that accept public tuition~~ eligible to receive public tuition. If the approved independent school is entitled to special education cost reimbursement under that section, it may bill

1 the supervisory union for excess special education costs incurred by the
2 independent school in providing special education services to that student
3 beyond those covered by general tuition. If those costs for that student exceed
4 the extraordinary expenditures threshold as defined in subdivision (a)(2) of this
5 section, the supervisory union shall be entitled to extraordinary reimbursement
6 under this section for that student as if it incurred those costs directly.

7 Sec. 14. 16 V.S.A. § 2973 is amended to read:

8 § 2973. INDEPENDENT SCHOOL TUITION RATES

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

20 * * *

1 (b)(1) The Secretary of Education shall establish minimum standards of
2 services for students receiving special education services in independent
3 schools in Vermont and may advise independent schools as to the need for
4 certain special education services in Vermont.

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

15 * * *

16 (C)(i) The Secretary shall set, after consultation with independent
17 schools in Vermont, the maximum tuition rates to be paid by the Agency and
18 supervisory unions or school districts to ~~independent schools that limit~~
19 ~~enrollment to students who are on an IEP or a plan under Section 504 of the~~
20 ~~Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to~~
21 ~~a written agreement between the LEA and the school~~ therapeutic approved

1 independent schools. The maximum tuition rates shall be based on the level of
2 services provided by the school.

3 * * *

4 * * * Forms and Report * * *

5 Sec. 15. AGENCY OF EDUCATION; FORMS; REPORT

6 (a) Academic progress and attendance. On or before January 15, 2024, the
7 Agency of Education shall create a standard form or forms for public and
8 approved independent schools to report the attendance record and academic
9 progress of tuitioned students to the student's local education agency, as well
10 as establish the frequency with which such information shall be reported. In
11 developing the form or forms, the Agency shall consult with the Vermont
12 Principals' Association, the Vermont School Board's Association, the Vermont
13 Superintendents Association, the Vermont National Education Association,
14 and the Vermont Independent Schools Association.

15 (b) Compliance attestation. On or before September 1, 2023, the Agency
16 of Education shall create an attestation form to be used by approved
17 independent schools eligible to receive public tuition to certify annual
18 compliance with all statutory requirements for approved independent schools
19 and the Board's rules for approved independent schools, as required in 16
20 V.S.A. § 166(b)(A)(9)(vi).

1 time and may conditionally approve the school as eligible to receive public
2 tuition based on such progress. Failure to obtain full accreditation on or before
3 July 1, 2029 may result in the State Board using its powers under 16 V.S.A.
4 § 166(b)(5) to revoke, suspend, or impose conditions on the eligibility of an
5 approved independent school to receive public tuition, pursuant to 16 V.S.A.
6 § 166(b)(9)(B).

7 Sec. 17. OUT-OF-STATE SCHOOL ATTENDANCE TRANSITION

8 A student enrolled for the 2022–2023 school year in, or that has been
9 accepted for enrollment for the 2023–2024 school year by, an approved
10 independent school in another state or country that would not be eligible to
11 receive public tuition under 16 V.S.A. § 828 as amended by this act shall
12 continue to be entitled to public tuition until such time as the student graduates
13 from that school.

14 * * * Moratorium on Approval of New Approved Independent Schools * * *

15 Sec. 18. MORATORIUM ON APPROVAL OF NEW APPROVED

16 INDEPENDENT SCHOOLS

17 Notwithstanding any provision of law to the contrary, the State Board of
18 Education shall be prohibited from approving an application for initial
19 approval of an approved independent school until further direction by the
20 General Assembly.

1 Sec. 19. POSITION DEVELOPMENT; REPORT

2 To ensure students attending an approved independent school eligible to
3 receive public tuition receive the services they are entitled to and to assist
4 students who believe they have been unfairly denied admission to an approved
5 independent school eligible to receive public tuition, the Agency of Education
6 shall provide the House and Senate Committees on Education with a detailed
7 recommendation for a Public Tuition Student Advocate position. The
8 recommendation shall include:

9 (1) a job description, including qualification criteria;

10 (2) a determination of whether a new position would need to be created
11 or whether the duties of the Public Tuition Student Advocate can be assigned
12 to a current position within the Agency of Education; and

13 (3) any necessary appropriations to fund this position.

14 * * * Effective Dates * * *

15 Sec. 20. EFFECTIVE DATES

16 (a) This section and Sec. 10 (repeal) shall take effect on passage.

17 (b) Sec. 9 (16 V.S.A. § 828) and, in Sec. 2, 16 V.S.A. § 166(b)(9)(A)(vi)
18 and (ix) (admissions process and fees) shall take effect on July 1, 2024.

19 (c) The remainder of this act shall take effect on July 1, 2023.