

1 Introduced by Committee on Education

2 Date:

3 Subject: Education; approved independent schools; tuition

4 Statement of purpose of bill as introduced: This bill proposes to require

5 approved independent schools to meet specific requirements in order to be

6 approved as eligible to receive public tuition, including (1) agreeing to enroll

7 any student who requires special education services under specific

8 circumstances; (2) accreditation by specific school accreditation organizations;

9 (3) agreeing to report attendance, enrollment changes, State-mandated

10 assessment results, and student performance data to a tuitioned student's local

11 education agency; (4) agreeing to adopt and implement policies and procedures

12 to comply with the Vermont Public Accommodations Act and the Vermont

13 Fair Employment Practices Act; (5) maintaining an open enrollment process

14 for publicly tuitioned students; (6) maintaining a tuition rate for publicly

15 tuitioned students that is the same as or lower than the tuition rate for private

16 payer students; and (7) attesting to compliance with all laws and rules

17 applicable to approved independent schools. The bill also proposes to make

18 conforming changes throughout Title 16 based on these new requirements, as

19 well as establishes a moratorium on the approval of new initial applications for

20 approved 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) Statistic: amount of public funds to independent schools.

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

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

9 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

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

13 (b) Approved independent schools. On application, the State Board shall
14 approve an independent school that offers elementary or secondary education
15 if it finds, after opportunity for hearing, that the school provides a minimum
16 course of study pursuant to section 906 of this title and that it substantially
17 complies with all statutory requirements for approved independent schools and
18 the Board's rules for approved independent schools. ~~An independent school~~
19 ~~that intends to accept public tuition shall be approved by the State Board only~~
20 ~~on the condition that the school agrees, notwithstanding any provision of law~~
21 ~~to the contrary, to enroll any student who requires special education services~~

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

19 * * *

20 (5) The State Board may revoke, suspend, or impose conditions upon
21 the approval of an approved independent school, after having provided an

1 opportunity for a hearing, for substantial failure to comply with the minimum
2 course of study, for failure to demonstrate that the school has the resources
3 required to meet its stated objectives, for failure to comply with statutory
4 requirements or the Board’s rules for approved independent schools, or for
5 failure to report under subdivision (4) of this subsection (b). Upon that
6 revocation or suspension, students required to attend school who are enrolled
7 in that school shall become truant unless they enroll in a public school, an
8 approved or recognized independent school, or a home study program.

9 * * *

10 (9)(A) An approved independent school that intends to accept public
11 tuition shall be approved by the State Board as eligible to receive public tuition
12 only on the condition that the school complies with the following
13 requirements;

14 (i) the school agrees, notwithstanding any provision of law to the
15 contrary, to enroll any student who requires special education services and who
16 is placed in or referred to the approved independent school as an appropriate
17 placement and least restrictive environment for the student by the student’s
18 individualized education program team or by the local education agency;
19 provided, however, that this subdivision (i) shall not apply to therapeutic
20 approved independent schools as defined in subdivision 11(36) of this title;

1 (ii) the school is accredited by the Association of Independent
2 Schools in New England or the New England Association of Schools and
3 Colleges;

4 (iii) the school agrees to provide local education agencies with an
5 attendance report for students attending the school on public tuition at an
6 interval determined by and in a format approved by the Agency;

7 (iv) the school agrees to provide local education agencies with a
8 report of the academic progress of students attending the school on public
9 tuition at an interval determined by and in a format approved by the Agency;

10 (v) the school agrees to provide local education agencies with a
11 report of any enrollment change for students attending the school on public
12 tuition, including withdrawals, suspensions, or expulsions, provided that the
13 school shall notify a local education agency the same school day if the school
14 is considering expelling a publicly tuitioned student;

15 (vi) the school has adopted and implemented policies and
16 procedures to comply with the Vermont Public Accommodations Act,
17 9 V.S.A. chapter 139 and the Vermont Fair Employment Practices Act,
18 21 V.S.A. chapter 5, subchapter 6;

19 (vii) the school maintains an open enrollment process for students
20 attending the school on public tuition, provided that:

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

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

6 (viii) the school agrees to provide the results of all State-mandated
7 assessments of students on public tuition to the Agency of Education, which
8 shall publish the results on its website in a manner consistent with the
9 publication of the same results for public school students;

10 (ix) the school’s tuition rate for publicly tuitioned students shall be
11 the same as or lower than the tuition rate for private payer students and both
12 tuition rates shall be published on the school’s website and reported to the
13 Agency of Education annually;

14 (x) publicly tuitioned students shall not be charged an application
15 fee or any other fees for equivalent services, activities, or materials provided at
16 no charge by public schools; and

17 (xi) the school attests on or before July 1 of each year to
18 compliance with all statutory requirements for approved independent schools
19 and the Board’s rules for approved independent schools, on a form created by
20 the Agency, including documentation of the following:

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

5 (II) an assurance, signed by the head of school, that the school
6 complies with the Vermont Public Accommodations Act in all aspects of the
7 school’s admissions and operations; and

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

10 (B) No private right of action is created by this subdivision (9)
11 against an approved independent school approved by the State Board as
12 eligible to receive public tuition for failure to comply with any of the
13 requirements in this subdivision (9). The State Board is authorized to use its
14 powers under subdivision (5) of this subsection (b) to revoke, suspend, or
15 impose conditions on the eligibility of an approved independent school to
16 receive public tuition for failure to comply with these requirements. The
17 Board shall establish and maintain a process to receive, investigate, and resolve
18 allegations of noncompliance with these requirements in a manner that
19 provides due process for the person or persons making the allegation and the
20 approved independent school against which the allegation is made. A person
21 shall not coerce, threaten, interfere, or otherwise discriminate against any

1 individual who alleges noncompliance with the requirements under this
2 subdivision (9).

3 * * *

4 (g) Tuition students; assessments. An approved independent school that
5 accepts students for whom the district of residence pays tuition under chapter
6 21 of this title shall use the assessment or assessments required under
7 subdivision 164(9) of this title to measure attainment of standards for student
8 performance of those students. In addition, the school shall provide data
9 related to the assessment or assessments as required by the Secretary.

10 * * * Tuition * * *

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

12 § 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY
13 SCHOOLS OR PAY TUITION

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

17 * * *

18 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
19 school district that does not maintain an elementary school may grant general
20 authority to the school board to pay tuition for an elementary student at an
21 approved independent elementary school eligible to receive public tuition or an

1 independent school meeting education quality standards pursuant to sections
2 823 and 828 of this chapter upon notice given by the student’s parent or legal
3 guardian before April 15 for the next academic year.

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

5 § 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
6 PAY TUITION

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

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

15 * * *

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

18 (A) to a public school as in the judgment of the school board may
19 best serve the interests of the students; or

20 (B) to an approved independent school eligible to receive public
21 tuition or an independent school meeting education quality standards if the

1 school board judges that a student has unique educational needs that cannot be
2 served within the district or at a nearby public school.

3 * * *

4 Sec. 5. 16 V.S.A. § 823 is amended to read:

5 § 823. ELEMENTARY TUITION

6 * * *

7 (b) Unless the electorate of a school district authorizes payment of a higher
8 amount at an annual or special meeting warned for the purpose, the tuition paid
9 to an approved independent elementary school eligible to receive public tuition
10 or an independent school meeting education quality standards shall not exceed
11 the least of:

12 * * *

13 Sec. 6. 16 V.S.A. § 824 is amended to read:

14 § 824. HIGH SCHOOL TUITION

15 (a) Tuition for high school students shall be paid by the school district in
16 which the student is a resident.

17 * * *

18 (c) The district shall pay an amount not to exceed the average announced
19 tuition of Vermont union high schools for the year of attendance for its
20 students enrolled in an approved independent school eligible to receive public
21 tuition that does not functioning function as a Vermont area career technical

1 center, or any higher amount approved by the electorate at an annual or special
2 meeting warned for that purpose.

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

4 § 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN
5 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC
6 HIGH SCHOOL OF A SCHOOL DISTRICT

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

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

18 (c) A parent or legal guardian who is dissatisfied with the instruction
19 provided at a designated school or who cannot obtain for ~~his or her~~ the parent's
20 or legal guardian's child the kind of course or instruction desired there, or
21 whose child can be better accommodated in an approved independent school

1 eligible to receive public tuition or public high school nearer ~~his or her~~ the
2 child's home during the next academic year, may request on or before April 15
3 that the school board pay tuition to another approved independent school
4 eligible to receive public tuition or public high school selected by the parent or
5 guardian.

6 * * *

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

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

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

17 ~~(3) unless otherwise directed by an affirmative vote of the school~~
18 ~~district, when the Strafford Board approves a parental request to pay tuition to~~
19 ~~a nondesignated approved independent or public school, the Board shall pay~~
20 ~~tuition to the nondesignated school pursuant to section 824 of this title for the~~
21 ~~year in which the student is enrolled; provided, however, that it shall not pay~~

1 ~~tuition in an amount that exceeds the tuition paid to the designated school for~~
2 ~~the same academic year. [Repealed.]~~

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

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

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

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

19 (1) The independent school has adopted and implemented policies and
20 procedures to comply with all antidiscrimination laws applicable to public
21 schools in the state where the independent school is located and makes

1 reasonable efforts to enforce those policies and procedures, even if those laws
2 by their terms do not apply to the independent school. The school shall attest
3 to compliance with this subdivision on or before July 1 of each year.

4 (2) The independent school posts and maintains on its website in a
5 prominent place its policy to comply with all antidiscrimination laws that apply
6 to public schools in the state where the independent school is located. The
7 school shall attest to compliance with this subdivision on or before July 1 of
8 each year.

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

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

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

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

17 (a) A school district shall not pay the tuition of a student except to a public
18 school, an approved independent school located in Vermont, an independent
19 school meeting education quality standards, a tutorial program approved by the
20 State Board, an approved education program, a therapeutic school, or an
21 independent school in another state located within 25 miles of the Vermont

1 border and approved under the laws of that state, that complies with the
2 reporting requirement under subsection 4010(c) of this title, nor shall payment
3 of tuition on behalf of a person be denied on account of age. Unless otherwise
4 provided, a person who is aggrieved by a decision of a school board relating to
5 eligibility for tuition payments, the amount of tuition payable, or the school the
6 person may attend, may appeal to the State Board and its decision shall be
7 final.

8 * * *

9 Sec. 10. REPEAL

10 2022 Acts and Resolves No. 127, Sec. 21 (16 V.S.A. § 828) is repealed.

11 * * * Dual Enrollment * * *

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

13 § 944. DUAL ENROLLMENT PROGRAM

14 * * *

15 (b) Students.

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

18 (A) the student:

19 (i) is enrolled in:

20 (I) a Vermont public school, including a Vermont career
21 technical center;

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

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

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

9 (iii) is a home study student;

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

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

16 * * *

17 * * * Special Education * * *

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

19 § 11. CLASSIFICATIONS AND DEFINITIONS

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

21 * * *

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

2 § 2973. INDEPENDENT SCHOOL TUITION RATES

3 (a)(1) Notwithstanding any provision of law to the contrary, an approved
4 independent school that ~~accepts~~ is eligible to receive public tuition shall enroll
5 any student with an individualized education program who requires special
6 education services and who is placed in 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 (LEA); 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 LEA and the school.

14 * * *

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

19 (2)(A) The Secretary of Education shall set, after consultation with
20 independent schools in Vermont, and based on the level of services provided
21 by the schools, the maximum rates to be paid by the Agency and supervisory

1 unions or school districts for tuition, room, and board for residential placement
2 of students who require special education services. The amount charged by an
3 independent school for tuition shall reflect the school’s actual or anticipated
4 costs of providing special education services to the student and shall not
5 exceed the maximum rates set by the Secretary, provided that the Secretary
6 may permit charges in excess of these maximum rates where the Secretary
7 deems warranted.

8 * * *

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

17 * * *

18 * * * Forms and Report * * *

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

20 (a) Academic progress and attendance. On or before January 15, 2024, the
21 Agency of Education shall create a standard form or forms for public and

1 approved independent schools to report the attendance record and academic
2 progress of tuitioned students to the student’s local education agency, as well
3 as establish the frequency with which such information shall be reported. In
4 developing the form or forms, the Agency shall consult with the Vermont
5 Principals’ Association, the Vermont School Board’s Association, the Vermont
6 Superintendents Association, the Vermont National Education Association,
7 and the Vermont Independent Schools Association.

8 (b) Compliance attestation. On or before September 1, 2024, the Agency
9 of Education shall create an attestation form to be used by approved
10 independent schools eligible to receive public tuition to certify annual
11 compliance with all statutory requirements for approved independent schools
12 and the Board’s rules for approved independent schools, as required in 16
13 V.S.A. § 166(b)(A)(9)(vi).

14 (c) Report. In conjunction with developing the compliance attestation form
15 under subsection (b) of this section, the Agency shall review all policies public
16 schools are required to adopt and make a written recommendation to the House
17 and Senate Committees on Education regarding whether any such policies not
18 already applicable should also apply to approved independent schools eligible
19 to receive public tuition. The Agency shall submit a written report with its
20 recommendations on or before December 1, 2023.

21 * * * Transitions * * *

1 Sec. 16. ACCREDITATION TRANSITION

2 An approved independent school that intends to accept public tuition but is
3 not accredited by the Association of Independent Schools in New England or
4 the New England Association of Schools and Colleges on or before December
5 31, 2023 shall notify the State Board of Education of its intent to seek
6 accreditation on or before December 31, 2023. Such notice shall include any
7 progress already made toward accreditation and an anticipated approval date, if
8 applicable. The Board may request updates of accreditation progress at any
9 time and may conditionally approve the school as eligible to receive public
10 tuition based on such progress. Failure to obtain full accreditation on or before
11 July 1, 2029 may result in the State Board using its powers under 16 V.S.A.
12 § 166(b)(5) to revoke, suspend, or impose conditions on the eligibility of an
13 approved independent school to receive public tuition, pursuant to 16 V.S.A.
14 § 166(b)(9)(B).

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

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

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

2 Sec. 18. MORATORIUM ON APPROVAL OF NEW APPROVED
3 INDEPENDENT SCHOOLS

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

8 Sec. 19. POSITION DEVELOPMENT; REPORT

9 To ensure students attending an approved independent school eligible to
10 receive public tuition receive the services they are entitled to and to assist
11 students who believe they have been unfairly denied admission to an approved
12 independent school eligible to receive public tuition, the Agency of Education
13 shall provide the House and Senate Committees on Education with a detailed
14 recommendation for a Public Tuition Student Advocate position. The
15 recommendation shall include:

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

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

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

21 * * * Effective Dates * * *

1 Sec. 20. EFFECTIVE DATES

2 This act shall take effect on July 1, 2023, except that this section and
3 Sec. 10 (repeal) shall take effect on passage and Sec. 9 (16 V.S.A. § 828) shall
4 take effect on July 1, 2024.