

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 229
3 entitled “An act relating to State Board of Education approval of independent
4 schools” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. FINDINGS AND GOALS

8 (a) The General Assembly created the Approved Independent Schools
9 Study Committee in 2017 Acts and Resolves No. 49 to consider and make
10 recommendations on the criteria to be used by the State Board of Education for
11 designation of an “approved” independent school. The Committee was
12 specifically charged to consider and make recommendations on:

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

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

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

1 public tuition shall be approved by the State Board only on the condition that
2 the school agrees, notwithstanding any provision of law to the contrary, to
3 enroll any student who requires special education services and who is placed in
4 or referred to the approved independent school as an appropriate placement
5 and least restrictive environment for the student by the student’s individualized
6 education plan team or by the local education agency; provided, however, that
7 this requirement shall not apply to an independent school that limits enrollment
8 to students who are on an individualized education plan or a plan under Section
9 504 of the Rehabilitation Act of 1973 and who are enrolled pursuant to a
10 written agreement between the local education agency and the school.

11 (2) Except as provided in subdivision (6) of this subsection, the Board’s
12 rules must at minimum require that the school has the resources required to
13 meet its stated objectives, including financial capacity, faculty who are
14 qualified by training and experience in the areas in which they are assigned,
15 and physical facilities and special services that are in accordance with any
16 State or federal law or regulation.

17 (3) Approval may be granted without State Board evaluation in the case
18 of any school accredited by a private, State, or regional agency recognized by
19 the State Board for accrediting purposes, provided that the State Board shall
20 determine that the school complies with all student enrollment provisions
21 required by law.

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

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

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

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

1 (iii) the school’s failure to maintain required retirement
2 contributions;

3 (iv) the school’s use of designated funds for nondesignated
4 purposes;

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

9 (vi) the withdrawal or conditioning of the school’s accreditation
10 on financial grounds by a private, State, or regional agency recognized by the
11 State Board for accrediting purposes; or

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

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

18 (ii) If the State Board, after having provided the school a
19 reasonable opportunity to respond, does not find that the school has
20 satisfactorily responded or demonstrated its financial capacity, the State Board

1 may establish a review team, that, with the consent of the school, includes a
2 member of the Council of Independent Schools, to:

3 (I) conduct a school visit to assess the school’s financial
4 capacity;

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

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

9 (iii) If the State Board concludes that an approved independent
10 school lacks financial capacity to meet its stated objectives during the period of
11 its approved status, the State Board may take any action that is authorized by
12 this section.

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

18 (C) Information provided by an independent school under this
19 subsection that is not already in the public domain is exempt from public
20 inspection and copying under the Public Records Act and shall be kept
21 confidential.

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Sec. 3. 16 V.S.A. § 2973 is amended to read:

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

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school that accepts public tuition shall enroll any student with an individualized education plan who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student’s individualized education plan team or by the local education agency (LEA); provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973 and who are enrolled pursuant to a written agreement between the LEA and the school.

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

(3) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education in order to be approved or retain its approval to receive public funding for general tuition.

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

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

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

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

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

18 (C)(i) The Secretary shall set, after consultation with independent
19 schools in Vermont, the maximum tuition rates to be paid by the Agency and
20 supervisory unions or school districts to independent schools that limit
21 enrollment to students who are on an IEP or a plan under Section 504 of the

1 Rehabilitation Act of 1973 and who are enrolled pursuant to a written
2 agreement between the LEA and the school. The maximum tuition rates shall
3 be based on the level of services provided by the school.

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

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

14 (3) An approved independent school shall provide such documentation
15 to the Secretary as the Secretary deems necessary in order to ensure that
16 amounts payable under this subsection to the school are reasonable in relation
17 to the special education services provided by the school. The Secretary may
18 withhold, or direct an LEA to withhold, payment under this subsection pending
19 the Secretary's receipt of required documentation under this subsection, or may
20 withhold, or direct an LEA to withhold, an amount determined by the

1 Secretary as not reasonable in relation to the special education services
2 provided by the school.

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

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

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

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

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

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

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

1 (C) subject to subsection (d) of this section, employing or contracting
2 with staff who have the required licensure to provide special education
3 services;

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

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

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

8 (iii) the student's progress;

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

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

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

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

17 (A) shall enter into a written agreement with the LEA:

18 (i) committing to the requirements under subdivision (1) of this
19 subsection (c); and

20 (ii) if the LEA provides staff or resources to the approved
21 independent school on an interim basis under subsection (d) of this section,

1 setting forth the terms of that arrangement with assistance from the Agency of
2 Education on the development of those terms and on the implementation of the
3 arrangement; and

4 (B) subject to subsection (d) of this section, shall ensure that
5 qualified school personnel attend evaluation and planning meetings and IEP
6 meetings for the student.

7 (d) If an approved independent school enrolls a student under subdivision
8 (a)(1) of this section but does not have the staff or State Board certification to
9 provide special education services in the specific disability category that the
10 student requires, then:

11 (1) The LEA, in consultation with the approved independent school and
12 the Agency of Education, shall determine what special education services and
13 supports the school is able to provide to the student.

14 (2) The LEA shall, on an interim basis and at its cost, provide such
15 additional staff and other resources to the approved independent school as are
16 necessary to support the student until such time as the approved independent
17 school is able to directly provide these services and has the appropriate State
18 Board certification; provided, however, that the school shall have all required
19 staff and resources and the appropriate State Board certification within nine
20 academic months after the date of the student's initial enrollment.

1 (3) If the school does not have all required staff and resources and the
2 appropriate State Board certification within nine academic months after the
3 date of the student’s initial enrollment as required under subdivision (2) of this
4 subsection (d), then, in the event that the State Board determines that the
5 school has failed to make good faith and reasonable efforts to secure the
6 required staff, resources, and certification, the State Board may take any action
7 that is authorized by section 166 of this title.

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

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

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on passage.

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4 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE