

1 Introduced by Senator Baruth

2 Referred to Committee on

3 Date:

4 Subject: Education; approved independent schools; special education services;

5 financial capacity

6 Statement of purpose of bill as introduced: This bill proposes to require that an  
7 approved independent school enroll any student requiring special education  
8 services who is placed in or referred to the approved independent school as an  
9 appropriate placement and least restrictive environment for the student either  
10 by the local education agency or by the Secretary of Education and to clarify  
11 the process and requirements for the State Board of Education to determine  
12 whether an independent school seeking approved status satisfies the  
13 requirement that it has the financial capacity to meet its stated objective.

14 An act relating to State Board of Education approval of independent schools

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

16 Sec. 1. 16 V.S.A. § 166(b) is amended to read:

17 (b) Approved independent schools. On application, the State Board shall  
18 approve an independent school that offers elementary or secondary education  
19 if it finds, after opportunity for hearing, that the school provides a minimum  
20 course of study pursuant to section 906 of this title and that it substantially

1 complies with all statutory requirements for approved independent schools and  
2 the Board’s rules for approved independent schools. [Option 1—  
3 Notwithstanding any provision of law to the contrary, an approved independent  
4 school shall enroll any student requiring special education services who is  
5 placed in or referred to the approved independent school as an appropriate  
6 placement and least restrictive environment for the student either by the local  
7 education agency (LEA) or by the Secretary of Education.] [Option 2 (Jeff  
8 Francis)—An approved independent school shall enroll any student with  
9 disabilities consistent with its educational programming, resources, and  
10 capabilities, as evaluated and determined by the student’s IEP team and as  
11 prescribed in existing federal and state non-discrimination and public  
12 accommodations statutes] The State Board shall refuse to grant approval to an  
13 independent school if the school’s enrollment policy does not comply with this  
14 requirement. Except as provided in subdivision (6) of this subsection, the  
15 Board’s rules must at minimum require that the school has the resources  
16 required to meet its stated objectives, including financial capacity, faculty who  
17 are qualified by training and experience in the areas in which they are  
18 assigned, and physical facilities and special services that are in accordance  
19 with any State or federal law or regulation. Approval may be granted without  
20 State Board evaluation in the case of any school accredited by a private, State,  
21 or regional agency recognized by the State Board for accrediting purposes.

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

3 \* \* \*

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

14 \* \* \*

15 (8)(A) An independent school shall seek to demonstrate its financial  
16 capacity for approval under this subsection by providing to the State Board  
17 with its application for approval:

18 (i) a statement of financial capacity for the school's current or  
19 immediately preceding fiscal year issued by:

20 (I) an accrediting agency recognized by the State Board;

1                   (II) a licensed certified public accountant or licensed certified  
2 public accounting firm; or

3                   (III) a peer review team or independent reviewer appointed by  
4 the [Council of Independent Schools] and approved by the Secretary of  
5 Education;

6                   (ii) an audit report for the school’s current or immediately  
7 preceding fiscal year issued by a licensed certified public accountant or  
8 licensed certified public accounting firm; or

9                   (iii) IRS Form 990 for the school’s current or immediately  
10 preceding fiscal year.

11                   (B)(i) The State Board shall find that an independent school that  
12 submits any of the documentation under subdivision (A) of this subdivision (8)  
13 has demonstrated the financial capacity for approval under this subsection if it  
14 finds that:

15                   (I) the documentation demonstrates that the school has the  
16 financial capacity to meet its stated objective for the period covered by the  
17 documentation; and

18                   (II) the documentation does not contain information that causes  
19 the State Board to believe that the school would likely be unable to maintain its  
20 financial capacity to meet its stated objective during the period of State Board  
21 approval.

1                   (ii) Nothing in this section prohibits an independent school from  
2                   voluntarily submitting additional information related to its financial capacity to  
3                   the State Board or prohibits the State Board from finding that the school has  
4                   demonstrated its financial capacity based upon this additional information.

5                   (iii) If the State Board does not find that the school has  
6                   demonstrated its financial capacity for approval under this subsection, the State  
7                   Board may approve the school subject to conditions imposed by the State  
8                   Board that are designed to provide the State Board with assurance that the  
9                   school will have the financial capacity to meet its stated objective within a  
10                  reasonable period of time as determined by the State Board.

11                  (iv) The State Board may require an independent school that is  
12                  seeking approval for the first time to provide it with updated documentation  
13                  under subdivision (A) of this subdivision (8) on a periodic basis during the  
14                  approval period, provided that the school shall not be required to provide this  
15                  documentation more than once in any 12-month period.

16                  (C) If an approved independent school believes that it is or likely will  
17                  become financially impaired, as defined in subdivision (D) of this subdivision  
18                  (8), during the period of its approved status, the school shall notify the  
19                  Secretary of Education within five days of making this determination.  
20                  Annually, on or before August 1, an approved independent school shall  
21                  compare its student enrollment for the current school year to the immediately

1 preceding school year and, if its student enrollment has declined by 10 percent  
2 or more over this period, shall notify the Secretary of Education within five  
3 days of its determination. If an approved independent school has failed to file  
4 its federal or State tax returns when due (after taking into account permissible  
5 extension periods), it shall notify the Secretary of Education within five days  
6 of the due date.

7 (D) As used in this subsection, the term “financially impaired”  
8 means:

9 (i) the school’s failure to pay debts as they become due in the  
10 ordinary course of business, including the school’s failure to meet its payroll  
11 obligations as they are due, to pay federal or State payroll tax obligations as  
12 they are due, or to pay any of its other expenses within 30 days of their due  
13 date;

14 (ii) the school’s failure to comply with the financial terms of its  
15 debt obligations, including the school’s failure to make interest or principal  
16 payments as they are due or to maintain any required financial ratios;

17 (iii) the withdrawal or conditioning of the school’s accreditation  
18 on financial grounds by a private, State, or regional agency recognized by the  
19 State Board for accrediting purposes; or

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

1           (E) If the State Board reasonably believes that an approved  
2           independent school lacks financial capacity to meet its stated objectives during  
3           the period of its approved status due to its financial impairment, then the State  
4           Board shall notify the school in writing of the reasons for this belief and permit  
5           the school a reasonable opportunity to respond. If the State Board, after having  
6           provided the school a reasonable opportunity to respond, does not find that the  
7           school has satisfactorily responded or demonstrated its financial capacity, the  
8           State Board may, with the written consent of the school, request the [Council  
9           of Independent Schools] to establish a review team and conduct a school visit  
10           to assess the school’s financial capacity and submit a report of its findings and  
11           recommendations to the State Board. The State Board may also require the  
12           approved independent school to submit updated documentation under  
13           subdivision (A) of this subdivision (8), provided that the school shall not be  
14           required to provide this documentation more than once in any 12-month  
15           period. If the State Board concludes that an approved independent school  
16           lacks financial capacity to meet its stated objectives during the period of its  
17           approved status due to its financial impairment, the State Board may take any  
18           action that is authorized by this section.

19           (F) In considering whether an independent school lacks financial  
20           capacity to meet its stated objectives during the period of its approved status  
21           due to its financial impairment and what actions the State Board should take if

1 it makes this finding, the State Board may consult with, and draw on the  
2 analytical resources of, the Vermont Department of Financial Regulation.

3 (G) Information provided by an independent school to demonstrate  
4 its financial capacity under this subsection that is not already in the public  
5 domain is exempt from public inspection and copying under the Public  
6 Records Act and shall be kept confidential.

7 Sec. 2. 16 V.S.A. § 2973 is amended to read:

8 § 2973. INDEPENDENT SCHOOL TUITION RATES SCHOOLS

9 (a) Subject to subsection (e) of this section and notwithstanding any  
10 provision of law to the contrary, an approved independent school shall enroll  
11 any student requiring special education services who is placed in or referred to  
12 the approved independent school as an appropriate placement and least  
13 restrictive environment for the student by the local education agency (LEA).  
14 The terms “special education services” and “LEA,” as used in this section,  
15 shall have the same meanings as defined by State Board rules.

16 (b) The Secretary of Education shall establish minimum standards of  
17 services for students receiving special education services in independent  
18 schools in Vermont; shall set, after consultation with independent schools in  
19 Vermont, the maximum rates to be paid by the Agency and school districts for  
20 tuition, room, and board based on the level of services; and may advise



1 independent schools as to the need for certain special education services in  
2 Vermont.

3 (c)(1)(A) An approved independent school that enrolls a student requiring  
4 special education services under this section shall, as determined by the  
5 Secretary, be entitled to an amount for tuition, room and board or to  
6 reimbursement of expenses. Prior to enrollment of the student, the LEA, the  
7 student’s district of residence, and the approved independent school shall enter  
8 into a written contract:

9 (i) identifying the special education services that will be  
10 provided;

11 (ii) specifying whether the services will be provided on the basis  
12 of an amount paid for tuition, room and board or on the basis of expense  
13 reimbursement; and

14 (iii) specifying the cost, or in the case of reimbursement the  
15 factors for determining the costs, of those services.

16 (B) The Secretary of Education shall set, after consultation with  
17 independent schools in Vermont, the maximum rates to be paid for tuition,  
18 room, and board based on the level of special education services provided.  
19 The amount charged by an approved independent school for tuition, room and  
20 board shall reflect the school’s actual or anticipated costs of providing special  
21 education services to the student and shall not exceed the maximum rates set

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

3 (C) An approved independent school that receives reimbursement for  
4 expenses shall receive the same amount of reimbursement for its costs in  
5 providing those services as is provided to public schools for providing special  
6 education services under this chapter. The sources of this reimbursement to  
7 approved independent schools shall be the same as for public schools under  
8 this chapter. Costs of providing special education services that are  
9 unreimbursed under this chapter shall be paid by the student's district of  
10 residence in the same amount as if those services were provided by a public  
11 school.

12 (2)(A) The Secretary of Education may require an approved independent  
13 school to provide such reports to the Secretary as the Secretary deems  
14 necessary in order to ensure that amounts payable under this section to the  
15 school are reasonable in relation to the special education services provided by  
16 the school.

17 (B) The Secretary may withhold, or direct an LEA or school district  
18 to withhold, payment under this subsection (c) pending the Secretary's receipt  
19 of a required report under subdivision 2(A) of this subsection, or, subject to  
20 subsection (e) of this section, to the extent that the Secretary determines that  
21 the amounts claimed under this subsection (c) by an approved independent

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

3 **[subsection (d) is a placeholder pending recommendation from**  
4 **the Secretary]**

5 [(d) Subject to subsection (e) of this section, if an approved independent  
6 school enrolls a student under this section but does not have State Board  
7 approval to provide special education services in the specific disability  
8 category required by the student, then the LEA, in consultation with the  
9 approved independent school and the Agency of Education, shall determine  
10 how services and supports shall be provided by the approved independent  
11 school, and the approved independent school shall provide those services and  
12 supports in accordance with the LEA's determination until such time as the  
13 school obtains State Board approval for the specific disability category.]

14 (e)(1) Before a decision is made by the LEA under subsection (a) or (d) of  
15 this section or by the Secretary of Education under subsection (c) of this  
16 section, an approved independent school shall have the right to consult with:

17 (A) under subsection (a) of this section, the LEA with regard to its  
18 determination that the approved independent school is an appropriate  
19 placement and least restrictive environment for the student;

20 (B) under subsection (c) of this section, the Secretary of Education  
21 with regard to the Secretary's determination:

1           (i) as to whether the school shall receive an amount for tuition,  
2 room and board or reimbursement for expenses; and

3           (ii) that amounts claimed under that subsection by an approved  
4 independent school are not reasonable in relation to the special education  
5 services provided by the school; and

6           [subdivision (C) is a placeholder pending recommendation from  
7 the Secretary]

8           (C) under subsection (d) of this section, the LEA with regard to its  
9 determination as to the services and supports required to be provided by the  
10 approved independent school pending approval by the State Board for the  
11 specific disability category.

12           (2)(A) The deciding party under subdivision (1) of this subsection shall  
13 notify the approved independent school within 10 days of making its decision  
14 and shall include in its notification the basis for its decision.

15           (B) If the approved independent school disagrees with the decision, it  
16 shall notify the deciding party of its disagreement and the basis for its  
17 disagreement within five days of its receipt of the notification of the decision.

18           (C) The deciding party shall convene a meeting with the approved  
19 independent school and other interested parties to consider the matter and any  
20 information provided by these parties within 30 days of its receipt of the

1 notification of the approved independent school's disagreement with the  
2 decision.

3 (D) The deciding party shall make its final decision and, within five  
4 days of the meeting, notify the approved independent school and other parties  
5 of the basis for its final decision.

6 (3) If an approved independent school disagrees with a decision under  
7 this subdivision (1)(A) or (C) of this subsection, it may appeal the decision to  
8 the Secretary of Education, who shall consider the matter in the Secretary's  
9 capacity as the Secretary of Education for children with disabilities under  
10 section 2943 of this title. The decision of the Secretary of Education on a  
11 matter under subdivision (1)(A) or (C) of this subsection shall be final. The  
12 decision of the Secretary of Education on a matter under subdivision (1)(B) of  
13 this subsection shall not be subject to appeal and shall be final.

14 ~~(b)~~(f) Neither school districts nor any State agency shall pay rates for  
15 tuition, room, and board; for students receiving special education in  
16 independent schools outside Vermont that are in excess of allowable costs  
17 approved by the authorized body in the state in which the independent school  
18 is located, except in exceptional circumstances or for a child who needs  
19 exceptional services, as approved by the Secretary.

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

4        Sec. 3. EFFECTIVE DATE

5        This act shall take effect on passage. [Need to consider transitional  
6        provisions]