

Edits in blue highlight added by independent schools

1 Introduced by Senator Baruth

2 Referred to Committee on

3 Date:

4 Subject: Education; approved independent schools; financial capacity

5 Statement of purpose of bill as introduced: This bill proposes to clarify the

6 process and requirements for the State Board of Education to determine

7 whether an independent school seeking approved status satisfies the

8 requirement that it has the financial capacity to meet its stated objective.

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

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

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

12 (b) Approved independent schools. On application, the State Board shall

13 approve an independent school that offers elementary or secondary education

14 if it finds, after opportunity for hearing, that the school provides a minimum

15 course of study pursuant to section 906 of this title and that it substantially

16 complies with the Board's rules for approved independent schools. Except as

17 provided in subdivision (6) of this subsection, the Board's rules must ~~at~~

18 minimum require that the school has the resources required to meet its stated

19 objectives, including financial capacity, faculty who are qualified by training

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1 and experience in the areas in which they are assigned, and physical facilities
2 ~~and special services~~ that are in accordance with any State or federal law or
3 regulation. Approval may be granted without State Board evaluation in the
4 case of any school accredited by a private, State, or regional agency recognized
5 by the State Board for accrediting purposes.

6 * * *

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

10 (i) a statement of financial capacity for the school’s current or
11 immediately preceding fiscal year issued by:

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

13 (II) a licensed certified public accountant or licensed certified
14 public accounting firm; ~~or~~

15 (III) a peer review team or independent reviewer appointed by
16 the Council of Independent Schools and approved by the Secretary of
17 Education;

18 (ii) an audit report for the ~~school’s~~ current or immediately
19 preceding fiscal year ~~for the school or its umbrella organization~~ issued by a
20 licensed certified public accountant or licensed certified public accounting
21 firm; or

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1 (iii) IRS Form 990 for the school's current or immediately
2 preceding fiscal year for the school or its umbrella organization.

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

7 (I) the documentation demonstrates that the school has the
8 financial capacity to meet its stated objective for the period covered by the
9 documentation; and

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

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

18 The State Board, based on reasonable and articulable grounds to believe that an
19 independent school seeking approval for the first time lacks the financial
20 capacity to fulfill its stated objectives, may require an independent school that
21 is seeking approval for the first time to provide it with updated documentation

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1 under subdivision (A) of this subdivision (8) on a periodic basis during the
2 approval period, ~~provided that the~~ A school shall not be required to provide
3 this documentation more than once in any 12-month period.

4 (C) If an approved independent school believes that it is or likely will
5 become financially impaired, as defined in subdivision (D) of this subdivision
6 (8), incapable of fulfilling its stated objectives during the period of its
7 approved status, the school shall notify the Secretary of Education within five
8 days of making this determination. Annually, on or before August 1, an
9 approved independent school shall compare its student enrollment for the
10 current school year to the immediately preceding school year and, if its student
11 enrollment has declined by 10 percent or more over this period, shall notify the
12 Secretary of Education within five days of its determination. If an approved
13 independent school has failed to file its federal or State tax returns when due
14 (after taking into account permissible extension periods), it shall notify the
15 Secretary of Education within five days of the due date.

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

18 (i) the school’s failure to pay debts as they become due in the
19 ordinary course of business, including the school’s failure to meet its payroll
20 obligations as they are due, to pay federal or State payroll tax obligations as

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1 ~~they are due, or to pay any of its other expenses within 30 days of their due~~
2 ~~date;~~

3 ~~(ii) the school's failure to comply with the financial terms of its~~
4 ~~debt obligations, including the school's failure to make interest or principal~~
5 ~~payments as they are due or to maintain any required financial ratios;~~

6 ~~(D) (iii) The withdrawal or conditioning of the school's~~
7 ~~accreditation on financial grounds by a private, State, or regional agency~~
8 ~~recognized by the State Board for accrediting purposes; or shall be reported to~~
9 ~~the Secretary of Education within five days of receipt of such notice.~~

10 ~~(iv) the school's insolvency, as defined in 9 V.S.A. § 2286(a);~~

11 ~~(E) If the State Board reasonably believes has reasonable and~~
12 ~~articulable evidence that an approved independent school lacks financial~~
13 ~~capacity to meet its stated objectives during the period of its approved status~~
14 ~~due to its financial impairment, then the State Board shall notify the school in~~
15 ~~writing of the reasons for this belief and permit the school a reasonable~~
16 ~~opportunity to respond. If the State Board, after having provided the school a~~
17 ~~reasonable opportunity to respond, does not find that the school has~~
18 ~~satisfactorily responded or demonstrated its financial capacity, the State Board,~~
19 ~~with the written consent of the school, may request the Council of Independent~~
20 ~~Schools to establish a review team and conduct a school visit to assess the~~
21 ~~school's financial capacity and submit a report of its findings and~~

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1 recommendations to the State Board. The State Board may also require the
2 approved independent school to submit updated documentation under
3 subdivision (A) of this subdivision (8), provided that the school shall not be
4 required to provide this documentation more than once in any 12-month
5 period. If the State Board concludes that an approved independent school
6 lacks financial capacity to meet its stated objectives during the period of its
7 approved status ~~due to its financial impairment, the State Board may take any~~
8 ~~action that is authorized by this section.~~ the Board must first consider measures
9 to rehabilitate a school’s lack of financial capacity to meet its stated objectives,
10 and in any event the Board’s actions must be narrowly tailored to minimize
11 disruption and discontinuation of the educational and special education
12 services provided to enrolled students of the independent school.

13 (F) Information provided by an independent school to demonstrate its
14 financial capacity under this subsection that is not already in the public domain
15 is exempt from public inspection and copying under the Public Records Act
16 and shall be kept confidential., in accordance with 1 V.S.A. § 317 (c) (9).
17 Information reviewed or received by a peer review team or independent
18 reviewer appointed pursuant to subdivision (8) shall not be disseminated
19 except to the Agency of Education and State Board of Education and only as
20 may be necessary to any findings regarding a school’s financial capacity to
21 meet its stated objectives.

DRAFT

(dr req 18-0118 – draft 4.1)
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- 1 Sec. 2. EFFECTIVE DATE
- 2 This act shall take effect on passage.