

No. 173  
2018

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**No. 173. An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.**

(H.897)

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

\* \* \* Findings \* \* \*

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont and State Agricultural College, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

(c) The Delivery of Services Report made the following five recommendations on best practices for the delivery of special education services:

(1) ensure core instruction meets most needs of most students;

(2) provide additional instructional time outside core subjects to students who struggle, rather than providing interventions instead of core instruction;

(3) ensure students who struggle receive all instruction from highly skilled teachers;

(4) create or strengthen a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) provide specialized instruction from skilled and trained experts to students with more intensive needs.

(d) The Funding Report noted, based on feedback from various stakeholders, including educators, school leaders, State officials, parents, and others, that Vermont's existing reimbursement model of funding special education has a number of limitations in that it:

(1) is administratively costly for the State and localities;

(2) is misaligned with policy priorities, particularly with regard to the delivery of a multitiered system of supports and positive behavioral interventions and supports;

(3) creates misplaced incentives for student identification, categorization, and placement;

(4) discourages cost containment; and

(5) is unpredictable and lacks transparency.

(e) The Funding Report assessed various funding models that support students who require additional support, including a census-based funding model. A census-based model would award funding to supervisory unions based on the number of students within the supervisory union and could be used by the supervisory union to support the delivery of services to all students. The Funding Report noted that the advantages of a census-based model are that it is simple and transparent, allows flexibility in how the funding is used by supervisory unions, is aligned with the policy priorities of serving students who require additional support across the general and special education service-delivery systems, and is predictable.

(f) The General Assembly agrees with the findings in the Delivery of Services Report and with the advantages of moving to a census-based special education funding model as described in the Funding Report. The General Assembly recognizes that changing the models for delivery of services and funding for students who require additional support is a significant change for school systems and their constituencies, and that they will require time and assistance in making necessary adjustments.

\* \* \* Goals \* \* \*

Sec. 2. GOALS

(a) By enacting this legislation, the General Assembly intends to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts.

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal year 2021, for school year 2020-2021, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

(2) The General Assembly recognizes that a student on an individualized education program is entitled, under federal law, to a free and appropriate public education in the least restrictive environment in accordance with that program. The changes to State funding for special education and the delivery of special education services as envisioned under this act are intended to facilitate the exercise of this entitlement.

(c) The General Assembly recognizes that it might be appropriate and equitable to provide a higher amount of census-based funding to supervisory unions that have relatively higher costs in supporting students who require additional support, but the General Assembly does not have sufficient

information on which to base this determination. Therefore, this act directs the Agency of Education to make a recommendation to the General Assembly on whether the amount of the census grant should be increased for supervisory unions that have relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. The General Assembly intends to reconsider this matter after receiving this recommendation and before the census-based model is implemented.

(d) To provide additional staff and resources to the Agency of Education to support its work with supervisory unions and schools that are transitioning to the best practices recommended in the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” issued by the District Management Group in November 2017.

Sec. 3. 16 V.S.A. § 2901 is amended to read:

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL

EDUCATION ENVIRONMENT

(a) ~~It is the policy of the State that each~~ Each local school district shall develop and maintain, in consultation with parents, a comprehensive system of education that ~~will~~ is designed to result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations that are needed by students in the district. These services could include a separate

alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is ~~disrupting the class or~~ having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide ~~quality~~ high-quality services to that student or to other students. This chapter does not replace or expand entitlements created by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: ~~20 U.S.C. § 1401 et seq.~~ chapter 33, Individuals with Disabilities Education Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act of 1973; and 42 U.S.C. ~~§ 12101 et seq.~~ chapter 126, Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

Sec. 4. 16 V.S.A. § 2902 is amended to read:

§ 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL  
SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain a tiered system of academic and behavioral supports for the purpose of providing all students

with the opportunity to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the tiered system of supports either to the superintendent pursuant to a contract entered into under section 267 of this title or to the school principal. The school shall provide all students a full and fair opportunity to access the system of supports and achieve educational success. The tiered system of supports shall, at a minimum, include an educational support team, instructional and behavioral interventions, and accommodations that are available as needed for any student who requires support beyond what can be provided in the general education classroom, and may include intensive, individualized interventions for any student requiring a higher level of support.

(b) The tiered system of supports shall:

- (1) be aligned as appropriate with the general education curriculum;
- (2) be designed to enhance the ability of the general education system to meet the needs of all students;
- (3) be designed to provide necessary supports promptly, regardless of an individual student's eligibility for categorical programs;
- (4) seek to identify and respond to students in need of support for ~~at-risk behaviors~~ emotional or behavioral challenges and to students in need of specialized, individualized behavior supports; ~~and~~

(5) provide all students with a continuum of evidence-based ~~and~~ ~~research-based behavior~~ positive behavioral practices that ~~teach and encourage~~ ~~prosocial skills and behaviors schoolwide~~ promote social and emotional learning, including trauma-sensitive programming, that are both school-wide and focused on specific students or groups of students;

(6) promote collaboration with families, community supports, and the system of health and human services; and

(7) provide professional development, as needed, to support all staff in full implementation of the multi-tiered system of support.

(c) The educational support team for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the Secretary, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition.

(2) Identify the classroom accommodations, remedial services, and other supports ~~that have been~~ to be provided to the identified student.

(3) Assist teachers to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

~~(6) Report no less than annually to the Secretary, in a form the Secretary prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).~~

(d) No individual entitlement or private right of action is created by this section.

(e) The Secretary shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with disabilities and the implementation of this section. The Secretary shall develop and provide to supervisory unions information to share with parents of children suspected of having a disability that describes the differences between the tiered system of academic and behavioral supports required under this section, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, including how and when school staff and parents of children having a suspected disability may request interventions and services under those entitlements.

(f) It is the intent of the General Assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the General Assembly that funding under chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

(g) The tiered system of academic and behavioral supports required under this section shall not be used by a school district to deny a timely initial comprehensive special education evaluation for children suspected of having a disability. The Agency of Education shall adopt policies and procedures to ensure that a school district's evaluation of a child suspected of having a disability is not denied because of implementation of the tiered system of academic and behavioral supports. The policies and procedures shall include:

(1) the definition of what level of progress is sufficient for a child to stop receiving instructional services and supports through the tiered system of academic and behavioral supports;

(2) guidance on how long children are to be served in each tier; and

(3) guidance on how a child's progress is to be measured.

\* \* \* Census-based Funding Model; Amendment of Special  
Education Laws \* \* \*

Sec. 5. 16 V.S.A. chapter 101 is amended to read:

CHAPTER 101. SPECIAL EDUCATION

Subchapter 1. General Provisions

§ 2941. POLICY AND PURPOSE

It is the policy of the State to ensure equal educational opportunities for all children in Vermont. This means that children with disabilities are entitled to receive a free appropriate public education. ~~It is further the policy of the State to pay 60 percent of the statewide costs expended by public education for children with disabilities.~~ The purpose of this chapter is to enable the Agency to ensure the provision of ~~the special educational facilities and instruction~~ education services and supports in accordance with individualized education programs necessary to meet the needs of children with disabilities.

§ 2942. DEFINITIONS

As used in this chapter

\* \* \*

(8) A “student who requires additional support” means a student:

(A) who is on an individualized education program;

(B) who is on a section 504 plan under the Rehabilitation Act

of 1973, 29 U.S.C. § 794;

(C) who is not on an individualized education program or section 504 plan but whose ability to learn is negatively impacted by a disability or by social, emotional, or behavioral needs, or whose ability to learn is negatively impacted because the student is otherwise at risk;

(D) for whom English is not the primary language; or

(E) who reads below grade level.

\* \* \*

Subchapter 2. Aid for Special Education and Support Services

§ 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ CENSUS GRANT

(a) ~~Each supervisory union shall be eligible to receive a standard mainstream block grant each school year. The mainstream block grant shall be equal to the supervisory union's mainstream salary standard multiplied by 60 percent.~~

(b) ~~The supervisory union shall expend all such assistance for special education services or for remedial or compensatory services in accordance with its service plan as required under section 2964 of this title. It shall likewise expend, from local funds, an amount not less than 40 percent of its mainstream salary standard for special education.~~

(c) ~~As used in this section:~~

(1) ~~"Mainstream salary standard" means:~~

~~(A) the supervisory union's full-time equivalent staffing for special education for the preceding year multiplied by the average special education teacher salary in the State for the preceding year; plus~~

~~(B) an amount equal to the average special education administrator salary in the State for the preceding year, plus, for any supervisory union with member districts which have in the aggregate more than 1,500 average daily membership, a fraction of an additional full-time equivalent salary for a special education administrator, the numerator of which is the aggregate average daily membership of the supervisory union's member districts minus 1,500, and the denominator of which is the aggregate average daily membership of member districts in the largest supervisory union in the State minus 1,500.~~

~~(2) "Full-time equivalent staffing" means 9.75 special education teaching positions per 1,000 average daily membership.~~

~~(d) If in any fiscal year, a supervisory union in which a school is maintained does not expend an amount equal to its mainstream salary standard on special education expenditures, the supervisory union may expend the balance, including the matching funds, to provide support and remedial services pursuant to section 2902 or 2903 of this title. A supervisory union choosing to expend funds in this way shall submit a report describing the services provided and their costs with the final financial report submitted under section 2968 of this title.~~

As used in this section:

(1) “Average daily membership” shall have the same meaning as in subdivision 4001(1) of this title, except it shall exclude State-placed students.

(2) “Average daily membership of a supervisory union” means the aggregate average daily membership of the school districts that are members of the supervisory union or, for a supervisory district, the average daily membership of the supervisory district.

(3) “Long-term membership” of a supervisory union in any school year means the average of the supervisory union’s average daily membership over three school years.

(4) “Uniform base amount” means an amount determined by:

(A) dividing an amount:

(i) equal to the average State appropriation for fiscal years 2018, 2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances); and

(ii) increased by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis; by

(B) the statewide average daily membership for prekindergarten through grade 12 for the 2019–2020 school year.

(b) The State commits to satisfying its special education maintenance of fiscal support requirement under 34 C.F.R. § 300.163(a).

(c) Each supervisory union shall receive a census grant each fiscal year to support the provision of special education services to students on an individualized education program. Supervisory unions shall use this funding and other available sources of funding to provide special education services to students in accordance with their individualized education programs as mandated under federal law. A supervisory union may use census grant funds to support the delivery of the supervisory union's comprehensive system of educational services under sections 2901 and 2902 of this title, but shall not use census grant funds in a manner that abrogates its responsibility to provide special education services to students in accordance with their individualized education programs as mandated under federal law.

(d)(1)(A) For fiscal year 2021, the amount of the census grant for a supervisory union shall be:

(i) the average amount it received for fiscal years 2017, 2018, and 2019 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government

Consumption Expenditures and Gross Investment as reported by the  
U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision  
(1) shall be divided by the supervisory union's long-term membership, to  
determine the base amount of the census grant, which is the amount of the  
census grant calculated on a per student basis.

(2) For fiscal year 2025 and subsequent fiscal years, the amount of the  
census grant for a supervisory union shall be the uniform base amount  
multiplied by the supervisory union's long-term membership.

(3) For fiscal years 2022, 2023, and 2024, the amount of the census  
grant for a supervisory union shall be determined by multiplying the  
supervisory union's long-term membership by a base amount established under  
this subdivision. The base amounts for each supervisory union for fiscal years  
2022, 2023, and 2024 shall move gradually the supervisory union's fiscal year  
2021 base amount to the fiscal year 2025 uniform base amount by pro rating  
the change between the supervisory union's fiscal year 2021 base amount and  
the fiscal year 2025 uniform base amount over this three-fiscal-year period.

§ 2962. ~~EXTRAORDINARY SERVICES~~ SPECIAL EDUCATION

REIMBURSEMENT

(a) ~~Except as otherwise provided in this subchapter, extraordinary services  
reimbursement shall be payable, based on where the related cost is incurred, to  
a town school district, city school district, union school district, unified union~~

~~school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.~~

~~(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to 95 percent of its extraordinary special education expenditures.~~

~~(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.~~

(1) As used in this section, “child” means a student with disabilities who is three years of age or older in the current school year.

(2) As used in this subchapter, “extraordinary expenditures” means a supervisory union’s allowable special education expenditures that for any one child in a fiscal year exceed \$60,000.00, increased annually by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and

Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(3) The State Board of Education shall define allowable special education expenditures that shall include any expenditures required under federal law in order to implement fully individual education programs under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, and any costs of mediation conducted by a mediator who is approved by the Secretary.

(b) If a supervisory union has extraordinary expenditures, it shall be eligible for extraordinary special education reimbursement (extraordinary reimbursement) as provided in this section.

(c) A supervisory union that has extraordinary expenditures in a fiscal year for any one child shall be eligible for extraordinary reimbursement equal to:

(1) an amount equal to its special education expenditures in that fiscal year for that child that exceed the extraordinary expenditures threshold amount under subdivision (a)(2) of this section (excess expenditures) multiplied by 95 percent; plus

(2) an amount equal to the lesser of:

(A) the amount of its excess expenditures; or

(B)(i) the extraordinary expenditures threshold amount under subdivision (a)(2) of this section; minus

(ii) the base amount of the census grant received by the supervisory union under subsection 2961(d) of this title for that fiscal year; multiplied by

(iii) 60 percent.

(d) The State Board of Education shall establish by rule the administrative process for supervisory unions to submit claims for extraordinary reimbursement under this section and for the review and payment of those claims.

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

§ 2963. ~~SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

~~(a) Based on where the related cost is incurred, each town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or supervisory union shall receive a special education expenditures reimbursement grant each school year.~~

~~(b) The amount of a school district's or supervisory union's special education expenditures reimbursement shall be equal to the total of its special education expenditures multiplied by the reimbursement rate for that year.~~

~~(c) As used in this subchapter:~~

~~(1) Special education expenditures are allowable expenditures for special education, as defined by rule of the State Board, less the following:~~

~~(A) revenue from federal aid for special education;~~

~~(B) mainstream service costs, as defined in subdivision 2961(c)(1) of this title;~~

~~(C) extraordinary special education expenditures, as defined in section 2962 of this title;~~

~~(D) any transportation expenses already reimbursed;~~

~~(E) special education costs for a student eligible for aid under section 2963a of this title; and~~

~~(F) other State funds used for special education costs as defined by the State Board by rule.~~

~~(2) The State Board shall define allowable expenditures under this subsection. Allowable expenditures shall include any expenditures required under federal law.~~

~~(3) “Special education expenditures reimbursement rate” means a percentage of special education expenditures that is calculated to achieve the 60 percent share required by subsection 2967(b) of this title. [Repealed.]~~

§ 2963a. EXCEPTIONAL CIRCUMSTANCES

~~(a) In lieu of reimbursement under section 2963 of this title, the Secretary shall reimburse a school district or supervisory union for 80 percent of the costs not eligible for reimbursement under section 2962 of this title for each student causing the school district or supervisory union to be eligible for extraordinary services reimbursement pursuant to that section. However, in order for a school district or supervisory union to be eligible for reimbursement under this section, the total costs of the school district or supervisory union eligible for extraordinary services reimbursement must equal or exceed 15 percent of the total costs eligible for State assistance under sections 2961, 2962, and 2963 of this title.~~

~~(b) An eligible school district or supervisory union may apply to the Secretary to receive reimbursement under this section. The Secretary shall award reimbursement to a school district or supervisory union under this section if the Secretary makes a determination that the school district or supervisory union considered all the cost effective and appropriate available~~

~~alternatives for placement and programs for students before incurring these costs. A decision of the Secretary shall be final. [Repealed.]~~

§ 2964. SERVICE PLAN

~~(a) As a condition of receiving assistance under this subchapter, a supervisory union shall file a service plan with the Secretary annually on or before October 15. The service plan shall contain the anticipated special education expenditures for the following school year for the supervisory union and its member districts. The plan shall be in a form prescribed by the Secretary and shall include information on services planned and anticipated expenditures.~~

~~(b) If a supervisory union fails to file a service plan by October 15, the Secretary may withhold any funds due the supervisory union and its member districts under this title until a service plan is filed and accepted by the Secretary as properly completed. [Repealed.]~~

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§ 2967. AID PROJECTION; STATE SHARE

~~(a) On or before December 15, the Secretary shall publish an estimate, by each supervisory union and its member districts to the extent they anticipate reimbursable, of its anticipated special education expenditures under this chapter, of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in for the ensuing school year.~~

(b) ~~The total expenditures made by the State in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education expenditures of funds that are not derived from federal sources. Special~~ As used in this section, special education expenditures shall include:

(1) costs eligible for grants and reimbursements under sections 2961 ~~through 2963a~~ and 2962 of this title;

(2) costs for services for persons who are visually impaired; ~~and~~

(3) costs for persons who are deaf and or hard of hearing;

~~(3)~~(4) costs for the interdisciplinary team program;

~~(4) costs for regional specialists in multiple disabilities;~~

(5) funds expended for training and programs to meet the needs of students with emotional or behavioral ~~problems~~ challenges under subsection 2969(c) of this title; and

(6) funds expended for training under subsection 2969(d) of this title.

#### § 2968. **REPORTS**

~~(a) On or before November 15, March 15, and August 1 of each school year, each supervisory union and its member districts to the extent they incur reimbursable expenditures under this chapter shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total expenditures for special education actually incurred during the preceding period, and shall describe revenues derived from different funding sources,~~

~~including federal assistance, State assistance under this chapter, and local effort.~~

~~(b) If a supervisory union or its member districts that have incurred reimbursable expenditures under this chapter fail to file a complete report by August 1, until the properly completed August 1 report is filed and accepted by the Secretary, the Secretary may withhold any funds due the supervisory union or school district under this title and shall subtract \$100.00 per business day from funds due to the supervisory union or school district under this title for that fiscal year. The Secretary may waive the \$100.00 penalty required under this subsection upon appeal by the supervisory union or school district. The Secretary shall establish procedures for administration of this subsection.~~

~~(c) The Secretary shall review and monitor the reports received pursuant to subsection (a) of this section as well as the service plans received pursuant to section 2964 of this title, and shall assist supervisory unions and school districts to complete and submit these documents in a timely and accurate fashion.~~

~~(d) Special education receipts and expenditures shall be included within the audits required of a supervisory union and its member districts that have incurred reimbursable expenditures under this chapter pursuant to section 323 of this title. [Repealed.]~~

§ 2969. PAYMENTS

(a)(1) On or before August 15, December 15, and April 15 of each fiscal year, the State Treasurer shall withdraw from the Education Fund, based on a warrant issued by the Commissioner of Finance and Management, and shall forward to each supervisory union ~~and its member districts to the extent they anticipate reimbursable expenditures under this chapter, the amount of State assistance estimated in accordance with State Board rules to be necessary to fund sections 2961 through 2963a of this title in the current fiscal period. The State Board shall by rule ensure that the amount of such assistance shall be adjusted to compensate for any overpayments or underpayments determined, after review and acceptance of the reports submitted under section 2968 of this title, to have been made in previous periods. Notwithstanding this subsection, failure to submit the reports within the timelines established by subsection 2968(a) of this title shall result in the withholding of any payments until the report is filed~~ one-third of the census grant due to the supervisory union under section 2961 of this title for that fiscal year.

(2) On or before November 15, January 15, April 15, and August 1 of each school year, each supervisory union, to the extent it incurs extraordinary expenditures under section 2962 of this title, shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total extraordinary expenditures actually incurred during the reporting period.

(3) On or before December 15, February 15, May 15, and September 15 of each school year, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each supervisory union the amount of extraordinary reimbursement incurred by the supervisory union under section 2962 of this title that is unreimbursed and determined by the Agency of Education to be payable to the supervisory union.

(b) [Repealed.]

(c) For the purpose of meeting the needs of students with emotional or behavioral ~~problems~~ challenges, each fiscal year the Secretary shall use for training, program development, and building school and regional capacity, up to one percent of the State funds appropriated under this subchapter.

(d) For the training of teachers, administrators, and other personnel in the identification and evaluation of, and provision of ~~education~~ educational services to children who require educational supports, each fiscal year the Secretary shall use up to 0.75 percent of the State funds appropriated under this subchapter. In order to set priorities for the use of these funds, the Secretary shall identify effective practices and areas of critical need. The Secretary may expend up to five percent of these funds for statewide training and shall distribute the remaining funds to school districts or supervisory unions.

(e) School districts and supervisory unions that apply for funds under this section must submit a plan for training that will result in lasting changes in

their school systems and give assurances that at least 50 percent of the costs of training, including in-kind costs, will be assumed by the applicant. The Secretary shall establish written procedures and criteria for the award of such funds. In addition, the Secretary may identify schools most in need of training assistance and may pay for 100 percent of the assistance to the supervisory union or school district for these schools to fund the provision of training assistance for these schools.

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§ 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

(a) Annually, the Secretary shall report to the State Board regarding:

(1) ~~special education expenditures by supervisory unions~~ the total amount of census grants made to supervisory unions under section 2961 of this title;

(2) ~~the rate of growth or decrease in special education costs, including the identity of high and low spending supervisory unions~~ the total amount of extraordinary special education reimbursement made to supervisory unions under section 2962 of this title;

(3) results for special education students;

(4) the availability of special education staff;

(5) the consistency of special education program implementation statewide;

(6) the status of ~~the education support systems~~ tiered systems of supports in supervisory unions; and

(7) a statewide summary of the special education student count, including:

(A) the percentage of the total average daily membership represented by special education students statewide and by supervisory union;

(B) the percentage of special education students by disability category; and

(C) the percentage of special education students served by public schools within the supervisory union, by day placement, and by residential placement.

~~(b) The Secretary's report shall include the following data for both high- and low-spending supervisory unions:~~

~~(1) each supervisory union's special education staff to child count ratios as compared to the State average, including a breakdown of ratios by staffing categories;~~

~~(2) each supervisory union's percentage of students in day programs and residential placements as compared to the State average of students in those placements and information about the categories of disabilities for the students in such placements;~~

~~(3) whether the supervisory union was in compliance with section 2901 of this title;~~

~~(4) any unusual community characteristics in each supervisory union relevant to special education placements;~~

~~(5) a review of high and low spending supervisory unions' special education student count patterns over time;~~

~~(6) a review of the supervisory union's compliance with federal and State requirements to provide a free, appropriate public education to eligible students; and~~

~~(7) any other factors affecting its spending.~~

~~(c) The Secretary shall review low spending supervisory unions to determine the reasons for their spending patterns and whether those supervisory unions used cost effective strategies appropriate to replicate in other supervisory unions.~~

~~(d) For the purposes of this section, a "high spending supervisory union" is a supervisory union that, in the previous school year, spent at least 20 percent more than the statewide average of special education eligible costs per average daily membership. Also for the purposes of this section, a "low spending supervisory union" is a supervisory union that, in the previous school year, spent no more than 80 percent of the statewide average of special education eligible costs per average daily membership.~~

~~(e) The Secretary and Agency staff shall assist the high spending supervisory unions, that have been identified in subsection (a) of this section and have not presented an explanation for their spending that is satisfactory to~~

~~the Secretary, to identify reasonable alternatives and to develop a remediation plan. Development of the remediation plan shall include an on-site review.~~

~~The supervisory union shall have two years to make progress on the remediation plan. At the conclusion of the two years or earlier, the supervisory union shall report its progress on the remediation plan.~~

~~(f) Within 30 days of receipt of the supervisory union's report of progress, the Secretary shall notify the supervisory union that its progress is either satisfactory or not satisfactory.~~

~~(1) If the supervisory union fails to make satisfactory progress, the Secretary shall notify the supervisory union that, in the ensuing school year, the Secretary shall withhold 10 percent of the supervisory union's special education expenditures reimbursement pending satisfactory compliance with the plan.~~

~~(2) If the supervisory union fails to make satisfactory progress after the first year of withholding, 10 percent shall be withheld in each subsequent year pending satisfactory compliance with the plan; provided, however, before funds are withheld in any year under this subdivision (f)(2), the supervisory union shall explain to the State Board either the reasons the supervisory union believes it made satisfactory progress on the remediation plan or the reasons it failed to do so. The State Board's decision whether to withhold funds under this subdivision shall be final.~~

~~(3) If the supervisory union makes satisfactory progress under any subdivision of this subsection, the Secretary shall release to the supervisory union any special education expenditures reimbursement withheld for the prior fiscal year only.~~

~~(g) Within 10 days after receiving the Secretary's notice under subdivision (f)(1) of this section, the supervisory union may challenge the Secretary's decision by filing a written objection to the State Board outlining the reasons the supervisory union believes it made satisfactory progress on the remediation plan. The Secretary may file a written response within 10 days after the supervisory union's objection is filed. The State Board may give the supervisory union and the Secretary an opportunity to be heard. The State Board's decision shall be final. The State shall withhold no portion of the supervisory union's reimbursement before the State Board issues its decision under this subsection.~~

~~(h) Nothing in this section shall prevent a supervisory union from seeking and receiving the technical assistance of Agency staff to reduce its special education spending.~~

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL  
ASSISTANCE

The Secretary may use up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in ~~subsection 2967(b) of this title~~ State Board of Education rules, to directly assist

supervisory unions with special education expenditures of an unusual or unexpected nature. ~~These funds shall not be used for exceptional circumstances that are funded under section 2963a of this title.~~ The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

\* \* \* Technical and Conforming Changes \* \* \*

Sec. 6. 16 V.S.A. § 826 is amended to read:

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

\* \* \*

(c) Excess special education costs incurred by a ~~district~~ supervisory union in providing special education services to a student beyond those covered by tuition may be charged to the student's supervisory union for the district of residence. However, only actual costs or actual proportionate costs attributable to the student may be charged.

\* \* \*

Sec. 7. 16 V.S.A. § 2958 is amended to read:

§ 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL  
PLACEMENTS

(a) A ~~school district~~ supervisory union shall notify the parents and the Secretary when it believes residential placement is a possible option for inclusion in a child's individualized education program.

\* \* \*

Sec. 8. 16 V.S.A. § 4002 is amended to read:

§ 4002. PAYMENT; ALLOCATION

(a) State and federal funds appropriated for services delivered by the supervisory union and payable through the Agency shall be paid to the order of the supervisory union and administered in accordance with the plan adopted under subdivision 261a(4) of this title. Funding for special education services under section 2969 of this title shall be paid to the ~~districts and~~ supervisory unions in accordance with that section.

(b) The Secretary shall notify the superintendent or chief executive officer of each supervisory union in writing of federal or State funds disbursed to member school districts.

\* \* \* Census-based Funding Advisory Group \* \* \*

Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

(a) Creation. There is created the Census-based Funding Advisory Group to consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.

(b) Membership. The Advisory Group shall be composed of the following 14 members:

(1) the Executive Director of the Vermont Superintendents Association or designee;

(2) the Executive Director of the Vermont School Boards Association or designee;

- (3) the Executive Director of the Vermont Council of Special Education Administrators or designee;
- (4) the Executive Director of the Vermont Principals' Association or designee;
- (5) the Executive Director of the Vermont Independent Schools Association or designee;
- (6) the Executive Director of the Vermont-National Education Association or designee;
- (7) the Secretary of Education or designee;
- (8) one member selected by the Vermont-National Education Association who is a special education teacher;
- (9) one member selected by the Vermont Association of School Business Officials;
- (10) one member selected by the Vermont Legal Aid Disability Law Project;
- (11) one member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;
- (12) the Commissioner of the Vermont Department of Mental Health or designee;

(13) one member who represents an approved independent school selected by the Council of Independent Schools; and

(14) one member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

(c) Powers and duties. The Advisory Group shall:

(1) advise the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;

(2) advise the Agency of Education and supervisory unions on the implementation of this act; and

(3) recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.

(d) Assistance. The Advisory Group shall have the administrative, technical, and legal assistance of the Agency of Education.

(e) Meetings.

(1) The Secretary of Education shall call the first meeting of the Advisory Group to occur on or before September 30, 2018.

(2) The Advisory Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Advisory Group shall cease to exist on June 30, 2022.

(f) Reports. On or before January 15, 2019, the Advisory Group shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and recommendations on the development of proposed rules to implement this act and any recommendations for legislation. On or before January 15 of 2020, 2021, and 2022, the Advisory Group shall submit a supplemental written report to the House and Senate Committees on Education and the State Board of Education with a status of implementation under this act and any recommendations for legislation.

(g) Reimbursement. Members of the Advisory Group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than eight meetings per year.

(h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for

per diem compensation and reimbursement under subsection (g) of this section.

The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide funding for per diem compensation and reimbursement under subsection (g) of this section.

\* \* \* Census Grant Supplemental Adjustment;

Pupil Weighting Factors; Report \* \* \*

Sec. 10. REPEAL

2017 Acts and Resolves No. 49, Sec. 35 (education weighting report) is repealed.

Sec. 11. CENSUS GRANT SUPPLEMENTAL ADJUSTMENT; PUPIL  
WEIGHTING FACTORS; REPORT

(a) The Agency of Education, in consultation with the Secretary of Human Services, the Vermont Superintendents Association, the Vermont School Boards Association, and the Vermont-National Education Association, shall consider and make recommendations on the following:

(1) Whether the census grant, as defined in the amendment to 16 V.S.A. § 2961 in Sec. 5 of this act, should be increased for supervisory unions that have, in any year, relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. In making this recommendation, the Agency of Education shall consider the report entitled

“Study of Vermont State Funding for Special Education” issued in December 2017 by the University of Vermont Department of Education and Social Services.

(2) Methods, other than the use of per pupil weighting factors, that would further the quality and equity of educational outcomes for students.

(3) The criteria used for determining weighted long-term membership of a school district under 16 V.S.A. § 4010, including each of the following:

(A) The current weighting factors and any supporting evidence or basis in the historical record for these factors.

(B) The relationship between each of the current weighting factors and the quality and equity of educational outcomes for students.

(C) Whether any of the weighting factors, including the weighting factors for students from economically deprived backgrounds and for students for whom English is not the primary language, should be modified, and if so, how the weighting factors should be modified and whether the modification would further the quality and equity of educational outcomes for students.

(D) Whether to add any weighting factors, including a school district population density factor and a factor for students who attend regional career technical education centers, and if so, why the weighting factor should be added and whether the weighting factor would further the quality and equity of educational outcomes for students. In considering whether to recommend the addition of a school district population density factor, the Agency of Education

shall consider the practices of other states, information from the National Conference of State Legislatures, and research conducted by higher education institutions working on identifying rural or urban education financing factors.

(b) On or before November 1, 2019, the Agency of Education shall submit a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance with its findings and any recommendations.

(c) The Agency of Education shall have the technical assistance of the Joint Fiscal Office and the Office of Legislative Council.

(d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$250,000.00 is appropriated for fiscal year 2018 from the Education Fund to the Agency of Education to provide funding for the purposes set forth in this section. The Agency of Education shall contract with a contractor with expertise in Vermont's education funding system to assist the Agency in producing the study required by this section. Any application of funds for the purpose of administrative overhead shall be capped at ten percent of the total sum allocated pursuant to this subsection.

\* \* \* Training and Technical Assistance on the Delivery of Special  
Education Services \* \* \*

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE  
DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018–2019, 2019–2020, and 2020–2021 school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance with the goal of embedding the following best practices for the delivery of special education services:

(1) ensuring core instruction meets most needs of most students;

(2) providing additional instructional time outside core subjects to students who require additional support, rather than providing interventions instead of core instruction;

(3) ensuring students who require additional support receive all instruction from highly skilled teachers;

(4) creating or strengthening a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) providing specialized instruction from skilled and trained experts to students with more intensive needs.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 and 2021 the amount of \$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, and 2021 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

\* \* \* Agency of Education; Staffing \* \* \*

### Sec. 13. AGENCY OF EDUCATION; STAFFING

The following positions are created in the Agency of Education: one full-time, exempt legal counsel specializing in special education law and two full-time, classified positions specializing in effective instruction for students who require additional support. There is appropriated to the Agency of Education

from the General Fund for fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating expenses.

\* \* \* Extraordinary Services Reimbursement \* \* \*

Sec. 14. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, ~~and an~~ an unorganized town or gore or to a supervisory union.

(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to ~~90~~ 95 percent of its extraordinary special education expenditures.

(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.

Sec. 15. 16 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

As used in this chapter:

\* \* \*

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, career technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental ~~fund-raising~~ fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under chapter 101 of this title.

(A) [Repealed.]

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

\* \* \*

(v) Spending attributable to the district’s share of special education spending ~~in excess of \$50,000.00~~ that is not reimbursed as an extraordinary reimbursement under section 2962 of this title for any ~~one~~ student in the fiscal year occurring two years prior.

\* \* \*

\* \* \* Rulemaking \* \* \*

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, 2019, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

\* \* \* Transition \* \* \*

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year 2021.

(b) On or before November 1, 2019, a supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union's projected fiscal year 2021 extraordinary special education reimbursement under Sec. 5 of this act.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

#### Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION

##### COSTS

(a) Allowable special education costs shall include salaries and benefits of licensed special education teachers, including vocational special needs teachers and instructional aides for the time they carry out special education responsibilities.

(1) The allowable cost that a local education agency may claim includes a school period or service block during which the staff member identified in this subsection is providing special education services to a group of eight or fewer students, and not less than 25 percent of the students are receiving the special education services, in accordance with their individualized education programs.

(2) In addition to the time for carrying out special education responsibilities, a local education agency may claim up to 20 percent of special education staff members' time, if that staff spends the additional time

performing consultation to assist with the development of and providing instructional services required by:

(A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; or

(B) a plan for students who require additional assistance in order to succeed in the general education environment.

(b) This section is repealed on July 1, 2020.

\* \* \* Approved Independent Schools \* \* \*

#### Sec. 19. FINDINGS AND GOALS

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

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

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

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

(b) The General Assembly in Act 49 directed the State Board of Education to suspend further development of the amendments to its rules for approval of independent schools pending receipt of the report of the Committee.

(c) The Committee issued its report in December 2017, noting that, while it was unable to reach consensus on specific legislative language, it did agree unanimously that Vermont students with disabilities should be free to attend the schools that they, their parents, and their local education agency deem appropriate to them.

(d) This act completes that work and provides the direction necessary for the State Board of Education to develop further the amendments to its rules for approval of independent schools.

Sec. 20. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

\* \* \*

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with the Board's rules for approved independent schools. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school ~~has~~ have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by

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

\* \* \*

(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.

\* \* \*

(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;

(iii) the school's failure to maintain required retirement contributions;

(iv) the school's use of designated funds for nondesignated purposes;

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

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

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

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

(ii) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:

(I) conduct a school visit to assess the school's financial capacity;

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

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

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

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

(C) Information provided by an independent school under this subsection that is not already in the public domain is exempt from public

inspection and copying under the Public Records Act and shall be kept confidential.

\* \* \*

Sec. 20a. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

\* \* \*

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency; provided, however, that this requirement shall not apply to an 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.

Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation. Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions required by law.

\* \* \*

Sec. 21. 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 program 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 program 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 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 LEA and the school.

(2) In placing a student with an independent school under subdivision (1) of this subsection, the student’s individualized education program 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 as defined under State Board of Education rules in order to be approved or retain its approval to receive public funding for general tuition.

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

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

(2)(A) The Secretary of Education shall set, after consultation with independent schools in Vermont, and based on the level of services provided

by the schools, the maximum rates to be paid by the Agency and supervisory unions or school districts for tuition, room, and board for residential placement of students who require special education services. The amount charged by an independent school for tuition shall reflect the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of these maximum rates where the Secretary deems warranted.

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

(ii) In establishing the direct-cost rates for reimbursement under this subdivision (B), the Secretary shall apply the principle of treating an approved independent school and a public school with parity in the amount of

federal, State, and local contributions to cover the costs of providing special education services.

(iii) An approved independent school that enrolls a student under subdivision (a)(1) of this section shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subdivision (B) to the school are reasonable in relation to the special education services provided by the school. The Secretary may withhold, or direct an LEA to withhold, payment under this subdivision pending the Secretary's receipt of required documentation under this subdivision, or may withhold, or direct an LEA to withhold, an amount determined by the Secretary as not reasonable in relation to the special education services provided by the school.

(C)(i) The Secretary shall set, after consultation with independent schools in Vermont, the maximum tuition rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP 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 LEA and the school. The maximum tuition rates shall be based on the level of services provided by the school.

(ii) The tuition rates established by the Secretary under this subdivision (C) shall be no more than the costs that are reasonably related to the level of services provided by the school and shall be set forth on a form

prescribed for that purpose by the Secretary of Education. The Secretary shall determine the relationship between costs and the level of services by using generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

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

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

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

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

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

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

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

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

(C) employing or contracting with staff who have the required licensure to provide special education services;

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

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

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

(iii) the student's progress;

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

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

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

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

(A) shall enter into a written agreement with the LEA committing to the requirements under subdivision (1) of this subsection (c); and

(B) shall ensure that qualified school personnel attend planning meetings and IEP meetings for the student.

(d)(1) If a student is placed with an approved independent school under subsection (a) of this section and either the LEA and the school each certifies, or the hearing officer under subdivision (3) of this subsection certifies, to the Secretary of Education that the school is unable to provide required IEP services due to its inability to retain qualified staff, then the LEA shall make another placement that satisfies the federal requirements to provide the student with a free and appropriate public education in the least restrictive environment.

(2) If the conditions in subdivision (1) of this subsection are satisfied:

(A) the approved independent school shall not be subject to any disciplinary action or the revocation of its approved status by the State Board of Education due to its failure to enroll the student; and

(B) no private right of action shall be created on the part of the student or his or her family members, or any other private party, to:

(i) require the LEA to place the student with the approved independent school or the school to enroll the student; or

(ii) hold the LEA or the approved independent school responsible for monetary damages due to the failure of the school to enroll the student or the necessity for the LEA to make an alternative placement.

(3) If the LEA and approved independent school do not agree on whether the school is unable to retain qualified staff under subdivision (1) of this subsection, then the LEA and the school shall jointly contract with a

hearing officer to conduct a hearing with the parties and make a determination, which shall be final. The cost for the hearing officer shall be split evenly between the two parties.

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

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

Sec. 22. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR  
SPECIAL EDUCATION CATEGORIES

(a) On or before November 1, 2019, the Vermont Standards Board for Professional Educators shall review its special educator endorsement requirements and initiate rulemaking to update its rules to ensure that these requirements do not serve as a barrier to satisfying statewide demands for licensed special educators.

(b) On or before November 1, 2020, the State Board of Education shall review its rules for approving independent schools in specific special education

categories and initiate rulemaking to update its rules to simplify and expedite the approval process.

\* \* \* Effective Dates \* \* \*

Sec. 23. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (16 V.S.A. § 4001); and

(3) Sec. 17 (transition).

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, 2020.

(c) Secs. 20a-21 (approved independent schools) shall take effect on July 1, 2022.

(d) This section and the remaining sections shall take effect on passage.

Date Governor signed bill: May 25, 2018