

(Draft No. 1.1 – Committee amendment to S.229)
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1 TO THE HONORABLE SENATE:

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

7 Sec. 1. FINDINGS AND GOALS

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

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

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

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

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

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

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

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

13 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

14 * * *

15 (b) Approved independent schools. On application, the State Board shall
16 approve an independent school that offers elementary or secondary education
17 if it finds, after opportunity for hearing, that the school provides a minimum
18 course of study pursuant to section 906 of this title and that it substantially
19 complies with **all statutory requirements for approved independent schools and**
20 **the Board’s rules for approved independent schools.** **Notwithstanding any**
21 **provision of law to the contrary, an approved independent school shall enroll**
22 **any student requiring special education services who is placed in or referred to**

1 the approved independent school as an appropriate placement and least
2 restrictive environment for the student by the local education agency. Except
3 as provided in subdivision (6) of this subsection, the Board’s rules must at
4 minimum require that the school has the resources required to meet its stated
5 objectives, including financial capacity, faculty who are qualified by training
6 and experience in the areas in which they are assigned, and physical facilities
7 and special services that are in accordance with any State or federal law or
8 regulation. Approval may be granted without State Board evaluation in the
9 case of any school accredited by a private, State, or regional agency recognized
10 by the State Board for accrediting purposes, provided that the State Board shall
11 determine that the school complies with all student enrollment provisions
12 required by law.

13 * * *

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

1 a public school, an approved or recognized independent school, or a home
2 study program.

3 * * *

4 (8)(A) If an approved independent school experiences any of the
5 following financial reporting events during the period of its approved status,
6 the school shall notify the Secretary of Education within five days of its
7 knowledge of the event:

8 (i) the school's failure to file its federal or State tax returns when
9 due (after taking into account permissible extension periods);

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

12 (iii) the school's failure to [make] [maintain] required retirement
13 contributions;

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

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

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

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

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

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

12 (I) conduct a school visit to assess the school’s financial
13 capacity;

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

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

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

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

6 (D) Information provided by an independent school under this
7 subsection that is not already in the public domain is exempt from public
8 inspection and copying under the Public Records Act and shall be kept
9 confidential.

10 * * *

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

12 § 2973. INDEPENDENT ~~SCHOOL TUITION RATES~~ SCHOOLS

13 (a) Notwithstanding any provision of law to the contrary, an approved
14 independent school shall enroll any student requiring special education
15 services who is placed in the approved independent school as an appropriate
16 placement and least restrictive environment for the student by the local
17 education agency (LEA). The terms “special education services,” “LEA,” and
18 “individualized education plan” or “IEP” as used in this section shall have the
19 same meanings as defined by State Board rules.

20 (b)(1) The Secretary of Education shall establish minimum standards of
21 services for students receiving special education services in independent

1 schools in Vermont; shall set, after consultation with independent schools in
2 Vermont, the maximum rates to be paid by the Agency and school districts for
3 tuition, room, and board based on the level of services; and may advise
4 independent schools as to the need for certain special education services in
5 Vermont.

6 (2)(A) The amount charged by an approved independent school for
7 tuition, room, and board for a student placed by a LEA under subsection (a) of
8 this section shall reflect the school’s actual or anticipated costs of providing
9 special education services to the student and shall not exceed the maximum
10 rates set by the Secretary, provided that the Secretary may permit charges in
11 excess of these maximum rates where the Secretary deems warranted.

12 (B) An approved independent school that enrolls a student placed by
13 a LEA under subsection (a) of this section may bill the responsible LEA for
14 excess special education costs incurred by the independent school in providing
15 special education services beyond those covered by tuition. Reimbursement of
16 these excess s special education costs shall be based on the direct costs rates
17 approved by the Secretary for services actually provided to the student
18 consistent with the AOE Technical Manual for special education cost
19 accounting and approved by the Agency of Education.

20 (C) Notwithstanding anything to the contrary in this subsection (b),
21 the total amount of payments made by or on behalf of the State or a LEA to an

1 approved independent school for providing services to a student placed with
2 the school by the LEA under subsection (a) of this section shall not be less than
3 the total amount that would have been paid to a public school had the student
4 been placed in the public school.

5 (3) An approved independent school shall provide such reports to the
6 Secretary as the Secretary deems necessary in order to ensure that amounts
7 payable under this subsection to the school are reasonable in relation to the
8 special education services provided by the school. The Secretary may
9 withhold, or direct an LEA to withhold, payment under this subsection pending
10 the Secretary's receipt of a required report under this subsection, or an amount
11 determined by the Secretary as not reasonable in relation to the special
12 education services provided by the school.

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

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

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

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

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

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

6 (B) committing to implementing the IEP of a student with special
7 education needs, providing the required services, and appropriately
8 documenting the services and the student’s progress;

9 (C) subject to subsection (d) of this section, having staff with the
10 required licensure to provide special education;

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

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

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

15 (iii) the student’s progress;

16 (iv) the maintenance of the student’s enrollment in the
17 independent school; and

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

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

1 (2) An approved independent school that enrolls a student requiring
2 special education services who is placed by a LEA under subsection (a) of this
3 section:

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

6 (B) shall ensure that qualified school personnel attend evaluation and
7 planning meetings and IEP meetings for the student; and

8 (C) is not required to demonstrate that it has the resources to serve
9 every category of special education in order to be approved or retain its
10 approval to receive tuition under subsection (b) of this section.

11 (d) If an approved independent school enrolls a student placed by a LEA
12 under subsection (a) of this section but does not have the staff or State Board
13 approval to provide special education services in the specific disability
14 category required by the student, then:

15 (1) the LEA, in consultation with the approved independent school and
16 the Agency of Education, shall determine what services and supports are
17 necessary to provide the special education services to the student; and

18 (2) the LEA shall, on an interim basis, provide such staff and other
19 resources to the approved independent school as are necessary to provide these
20 services until such time as the approved independent school is able to directly
21 provide these services and has the appropriate State Board approval.

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

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

10 Sec. 4. EFFECTIVE DATE

11 This act shall take effect on passage.

12

13 (Committee vote: _____)

14

15

Senator _____

16

FOR THE COMMITTEE