

1 S.229

2 Introduced by Senator Baruth

3 Referred to Committee on Education

4 Date: January 3, 2018

5 Subject: Education; approved independent schools; financial capacity

6 Statement of purpose of bill as introduced: This bill proposes to clarify the
7 process and requirements for the State Board of Education to determine
8 whether an independent school seeking approved status satisfies the
9 requirement that it has the financial capacity to meet its stated objective.

10 An act relating to State Board of Education approval of independent
11 schools

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

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

14 (b) Approved independent schools. On application, the State Board shall
15 approve an independent school that offers elementary or secondary education
16 if it finds, after opportunity for hearing, that the school provides a minimum
17 course of study pursuant to section 906 of this title and that it substantially
18 complies with the Board's rules for approved independent schools. Except as
19 provided in subdivision (6) of this subsection, the Board's rules must at
20 ~~minimum require that the school has the resources required to meet its stated~~

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

7 * * *

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

18 * * *

19 (8)(A) An independent school shall seek to demonstrate its financial
20 capacity for approval under this subsection by providing to the State Board
21 with its application for approval.

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

3 (I) an accrediting agency recognized by the State Board;
4 (II) a licensed certified public accountant or licensed certified
5 public accounting firm; or
6 (III) a peer review team or independent reviewer appointed by
7 the Council of Independent Schools and approved by the Secretary of
8 Education;

9 (ii) an audit report for the school's current or immediately
10 preceding fiscal year issued by a licensed certified public accountant or
11 licensed certified public accounting firm; or

12 (iii) IRS Form 990 for the school's current or immediately
13 preceding fiscal year.

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

18 (I) the documentation demonstrates that the school has the
19 financial capacity to meet its stated objective for the period covered by the
20 documentation; and

21 (II) the documentation does not contain information that causes

1 ~~the State Board to believe that the school would likely be unable to maintain~~
2 its financial capacity to meet its stated objective during the period of State
3 Board approval.

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

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

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

19 (C) If an approved independent school believes that it is or likely will
20 become financially impaired, as defined in subdivision (D) of this subdivision
21 (8), during the period of its approved status, the school shall notify the

1 ~~Secretary of Education within five days of making this determination.~~
2 Annually, on or before August 1, an approved independent school shall
3 compare its student enrollment for the current school year to the immediately
4 preceding school year and, if its student enrollment has declined by 10 percent
5 or more over this period, shall notify the Secretary of Education within five
6 days of its determination. If, after taking into account permissible extension
7 periods, an approved independent school has failed to file its federal or State
8 tax returns when due, it shall notify the Secretary of Education within five
9 days of the due date.

10 (D) As used in this subsection, “financially impaired” means:

11 (i) the school’s failure to pay debts as they become due in the
12 ordinary course of business, including the school’s failure to meet its payroll
13 obligations as they are due; failure to pay federal or State payroll tax
14 obligations as they are due; or failure to pay any of its other expenses within
15 30 days of their due date;

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

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

20 (F) In considering whether an independent school lacks financial
21 capacity to meet its stated objectives during the period of its approved status

1 ~~due to its financial impairment and what actions the State Board should take if~~
2 ~~it makes this finding, the State Board may consult with, and draw on the~~
3 ~~analytical resources of, the Department of Financial Regulation.~~

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

8 Sec. 2. EFFECTIVE DATE

9 ~~This act shall take effect on passage.~~

Sec. 1. 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. 2. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools.

(1) 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 plan 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 plan or a plan under Section 504 of the Rehabilitation Act of 1973 and who are enrolled pursuant to a written agreement between the local education agency and the school.

(2) Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school has 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.

(3) 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.

* * *

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

§ 2973. INDEPENDENT SCHOOL TUITION RATES SCHOOLS

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

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

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

(4) The terms “special education services,” “LEA,” and “individualized education plan” 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 on a nonresidential basis 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-costs 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.

(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 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.

(3) An approved independent school shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subsection 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 subsection pending the Secretary's receipt of required documentation under this subsection, 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)(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) subject to subsection (d) of this section, 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 under subdivision (a)(1) of this section:

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

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

(ii) if the LEA provides staff or resources to the approved independent school on an interim basis under subsection (d) of this section, setting forth the terms of that arrangement with assistance from the Agency of Education on the development of those terms and on the implementation of the arrangement; and

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

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

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

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

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

(b)(e) Neither a school districts 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. 4. EFFECTIVE DATE

This act shall take effect on passage.