

**Report of
Approved Independent Schools
Study Committee**

December 2017

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State House
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Table of Contents

I. Summary..... 1

II. The Committee 2

III. The Committee’s Charge 3

IV. Meetings and Witnesses..... 3

V. Appendices 4

I. SUMMARY

In November 2015, the Vermont State Board of Education proposed a series of amendments to the existing 2200 Series of its Rules and Practices, those governing the approval of independent schools in Vermont. Whatever their actual merits or demerits, the amendments proved controversial, both within the independent school community and within the administration of then-Governor Shumlin.

As a result, the administrative process of approval was slowed substantially.

In January 2017, the Senate Committee on Education began taking testimony on the proposed amendments to the 2200 series, with an eye toward facilitating agreement between the State Board (and representatives of public schools) and representatives of the independent school community. After several months of committee testimony, and consultations between the State Board and the independent school representatives, it became clear that agreement would remain elusive. As a result, the Senate Committee on Education drafted and passed legislative language designed to clarify the intent of the General Assembly with regard to the issues and proposed amendments at issue. The House agreed to that language and it was incorporated into 2013 Acts and Resolves No. 49, commonly called Act 49.

Accordingly, Act 49 charged this study committee to seek a way forward on three areas of concern: whether receiving state tuition dollars should be conditioned on open enrollment; how independent schools should deliver special education services, and in which categories; and what forms of financial disclosure should be mandatory for approved independent schools.

Section 42(f) of Act 49 makes clear that it is the intention of the Vermont General Assembly to resolve these contentious issues in as direct a manner as possible. It states, in part, “It is the intent of the General Assembly to resolve the issues raised by the State Board of Education’s proposed amendments to the 2200 Series of its Rules and Practices initiated by the State Board on November 13, 2015 (Rules for Approval of Independent Schools) after taking into account the report of the Committee required under subsection (e) of this section.” The committee’s charge also specifically mentions that this report should include “recommendations for any amendments to legislation.”

To this end, and at the discretion of the Chair, the study committee spent a good deal of its time working through bullet-point presentations by several of its participants, and then attempting to turn those presentations—or the elements of them that seemed to elicit the most mutual agreement—into workable drafts of legislative language.

While in this way the committee was able to make substantial headway on language setting forth strengthened requirements for financial disclosure, it was unable to reach a similar level of agreement and progress toward language on the delivery of special education services by approved independent schools in Vermont.

The study committee 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.

In large part, the remaining disagreements involved implementation. Our charge as a committee was to deliberate not over whether approved independent schools should deliver special education services but how they might best do so. The representatives of the approved independent schools on the committee made it clear from the start that they wished to deliver those services, but in order to ensure the viability of these schools, any additional financial and administrative costs incurred by the schools in delivering those services would need to be addressed adequately. Their worry was that the extension of a general special education mandate might put smaller independent schools out of business if not properly backed with public resources. In addition, the representatives of the approved independent schools emphasized the importance of being part of the student placement discussion with the local education agency. Other committee members worried that an extensive provision of public resources to approved independent schools might adversely affect the public school system in general, and that independent schools do not currently have in place the cost containment measures similar to those found in public schools. The study committee agreed that concerns around cost containment need to be central to working through the implementation challenges.

The committee as a whole had several other worries: that there may be an insufficient supply of qualified special education teachers and administrators to staff approved independent schools; that the Agency of Education would be unable to process the increased number of independent school applications for special education qualification; and that any intervention into the current system of delivery might inadvertently run afoul of complex Federal requirements surrounding the delivery of special education services.

Section V of this report includes an appendix containing the draft legislative language relating to financial capability. It does not at this point represent a consensus product of the study committee, but rather an indication of where our efforts to reach consensus broke off.

II. THE COMMITTEE

The Approved Independent Schools Study Committee was established by 2017 Acts and Resolves No. 49, Sec. 42. *See* Appendix A.

The Committee consisted of ten members:

- (1) One current member of the Senate appointed by the Committee on Committees: Senator Philip Baruth, *Chair*.
- (2) One current member of the House of Representatives appointed by the Speaker of the House: Representative Emily Long.
- (3) The Chair of the State Board of Education or designee: Bonnie Johnson-Aten.
- (4) The Secretary of Education or designee: Rebecca Holcombe.
- (5) The Executive Director of the Vermont Superintendents Association or designee: Jeffrey Francis.

(6) The Executive Director of the Vermont School Boards Association or designee: Nicole Mace.

(7) The Executive Director of the Vermont Independent Schools Association or designee: Seth Bongartz.

(8) Two members of the Vermont Council of Independent Schools, chosen by the Chair of the Vermont Council of Independent Schools: Michael Livingston and Liz Shayne.

(9) The Executive Director of the Vermont Council of Special Education Administrators or designee: Jo-Anne Unruh.

The Committee was staffed by: Jim DesMarais, Office of Legislative Council, and Suzanne Sprague, Agency of Education.

III. THE COMMITTEE'S CHARGE

2017 Acts and Resolves No. 49, Sec. 42 created the Approved Independent Schools Study Committee “to consider and make recommendations on the criteria to be used by the State Board of Education for designation as an ‘approved’ independent school.” Act 49 provided that the Committee should “consider and make recommendations on the criteria to be used by the State Board of Education for designation as an ‘approved’ independent school, including the following criteria:

(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.”

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, and to develop further these amendments after considering the Committee’s report.

The Committee was authorized to meet up to seven times and directed to file a report of its recommendations and any proposals for legislative action with the House and Senate Committees on Education and the State Board of Education.

IV. MEETINGS AND WITNESSES

The Committee met seven times in 2017: May 30, July 19, August 14, October 13, November 3, November 17, and December 15.

The following witnesses appeared before the Committee:

Molly Bachman, General Counsel, Agency of Education

Susan Marks, Agency of Education Special Education Consultant, WestEd National Center for Systemic Improvement

Karen Price, Vermont Family Network

Erin Maguire, Council of Administrators of Special Education

Rick Gordon, Compass School

Randi Kulis, Bennington-Rutland Supervisory Union

Jim DesMarais, Legislative Counsel, Office of Legislative Council

In addition to witness testimony, members of the Committee also made presentations to the Committee.

V. APPENDICES

Attached to this report are the following appendices:

Appendix A--2017 Acts and Resolves No. 49, Section 42

Appendix B-- Proposed legislative language on financial capacity considered by the Committee (but not agreed to)

Appendix C-- Testimony on accountability for public resources

Appendix D-- Proposed language for final report submitted by representatives of the independent school community

Appendix E-- Rough working draft of special education plan related to general education independent schools prepared by the Agency of Education and as amended (in red) by Vermont Council of Special Education Administrators

Appendix A

2017 Acts and Resolves No. 49, Section 42

* * * Approved Independent Schools Study Committee * * *

Sec. 42. APPROVED INDEPENDENT SCHOOLS STUDY COMMITTEE

(a) Creation. There is created the Approved Independent Schools Study Committee to consider and make recommendations on the criteria to be used by the State Board of Education for designation as an “approved” independent school.

(b) Membership. The Committee shall be composed of the following ten members:

- (1) one current member of the House of Representatives who shall be appointed by the Speaker of the House;
- (2) one current member of the Senate who shall be appointed by the Committee on Committees;
- (3) the Chair of the State Board of Education or designee;
- (4) the Secretary of Education or designee;
- (5) the Executive Director of the Vermont Superintendents Association or designee;
- (6) the Executive Director of the Vermont School Boards Association or designee;
- (7) the Executive Director of the Vermont Independent Schools Association or designee;
- (8) two members of the Vermont Council of Independent Schools, who shall be chosen by the Chair of the Vermont Council of Independent Schools; and
- (9) the Executive Director of the Vermont Council of Special Education Administrators or designee.

(c) Powers and duties. The Committee shall consider and make recommendations on the criteria to be used by the State Board of Education for designation as an “approved” independent school, including the following criteria:

(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.

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

(e) Report. On or before December 1, 2017, the Committee shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and any recommendations, including recommendations for any amendments to legislation.

(f) Continuation of rulemaking. It is the intent of the General Assembly to resolve the issues raised by the State Board of Education’s proposed amendments to the 2200 Series of its Rules and Practices initiated by the State Board on November 13, 2015 (Rules for Approval of Independent Schools) after taking into account the report of the Committee required under subsection (e) of this section. Therefore, notwithstanding any provision to the contrary under 16 V.S.A. § 164, the State Board of Education shall suspend further development of the amendments to the Rules for Approval of Independent Schools, pending receipt of the report of the Committee, and shall further develop these amendments after considering the Committee’s report.

(g) Meetings.

(1) The Secretary of Education shall call the first meeting of the Committee to occur on or before May 30, 2017.

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

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

(4) The Committee shall cease to exist on December 2, 2017.

(h) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than seven meetings.

(2) Other members of the Committee 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 no more than seven meetings.

Appendix B

Proposed legislative language on financial capacity considered by the
Committee (but not agreed to)

The Committee was unable to reach agreement on proposed legislative language concerning the scope and nature of financial information that should be required to be reported by approved independent schools to the State Board. Set forth below is the last draft of the proposed legislative language that was discussed by the Committee. The main areas of disagreement among Committee members on this language concerned whether the information to be submitted to the State Board would be sufficiently robust to facilitate a meaningful review of the school's financial capacity and the degree to which the State Board would have discretion to determine whether the material submitted demonstrated the school's financial capacity.

Proposed legislative language considered by the Committee (but not agreed to):

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

* * *

(5) The State Board may revoke, ~~or suspend,~~ or impose conditions upon the approval of an approved independent school, after opportunity for 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 the Board's rules for approved independent schools, or for failure to report under subdivision (4) of this subsection (b). Upon 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) An independent school shall seek to demonstrate its financial capacity for approval under this subsection by providing to the State Board with its application for approval:

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

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

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

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

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

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

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

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

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

(ii) Nothing in this section prohibits an independent school from voluntarily submitting additional information related to its financial capacity to the State Board or

prohibits the State Board from finding that the school has demonstrated its financial capacity based upon this additional information.

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

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

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

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

(i) the school’s failure to pay debts as they become due in the ordinary course of business, including the school’s failure to meet its payroll obligations as they are

due, to pay federal or State payroll tax obligations as they are due, or to pay any of its other expenses within 30 days of their due date;

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

(iii) 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

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

(E) 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 due to its financial impairment, 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. 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, with the written consent of the school, request the [Council of Independent Schools] to establish a review team and conduct a school visit to assess the school's financial capacity and submit a report of its findings and recommendations to the State Board. The State Board may also require the approved independent school to submit updated documentation under subdivision (A) of this subdivision (8), provided that the school shall not be required to provide this documentation more than once in any 12-month period. 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 due to its financial impairment, the State Board may take any action that is authorized by this section.

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

(G) Information provided by an independent school to demonstrate its financial capacity 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.

Testimony on accountability for public resources from Jeffrey Francis, Vermont
Superintendents Association, Jo-Anne Unruh, Vermont Council of Special Education

Administrators

Nicole Mace, Vermont School Boards Association

[to come—have requested word document from Jeff Francis to insert]

Appendix D

Proposed language for final report submitted by representatives of the independent school community

TO: SENATOR PHILIP BARUTH, CHAIR
APPROVED INDEPENDENT SCHOOL SUMMER STUDY COMMITTEE
FROM: SETH BONGARTZ, ELIZABETH SHAYNE, MICHAEL LIVINGSTON
RE: PROPOSED LANGUAGE FOR FINAL REPORT SUBMITTED BY
REPRESENTATIVES OF THE INDEPENDENT SCHOOL COMMUNITY
DATE: DECEMBER 11, 2017

The independent school community submit the following for consideration by the full committee for inclusion in the committee's final report. We submit this early in the week before our final meeting on December 15th so that it can be posted and available to all for consideration. The proposed language is consistent in both intent and content with the proposals we have made over the course of the summer with regard to financial capacity and a practical mechanism for the smaller independent schools to provide special education services to those needing them.

From the perspective of the independent school community, the report proposed below is the result of significant compromise and workable proposals. They are responsive to the committee's legislatively established charge and we are hopeful they will be embraced.

Introduction

Vermont independent school approval criteria have been under review and discussion in the State Board of Education and more recently in this legislatively-mandated study committee.

The committee's charge was to develop language to present to the committees of jurisdiction prior to the start of the 2018 legislative session. In part because the issues are so complex, the summer study committee has determined it more prudent to develop a report focused principally on ways of providing reasonable assurances of independent schools' financial capacity to meet their stated missions and to develop a framework by within which approved independent schools could be capable of providing special education services.

The committee therefore focused principally on possible ways of providing reasonable assurances for the ability of independent schools' financial capacity to fulfill their stated missions and develop a framework by which approved independent schools could be capable of providing special education services to students with disabilities.

This report provides context and makes recommendations pursuant to the legislative charge to the committee.

Financial Capacity

Analysis

State law currently requires independent schools to demonstrate their financial capacity to meet their stated objectives as a condition for approval 16 V.S.A. § 166(b).

Half of Vermont's 44 state approved non-sectarian general education independent schools are accredited by the New England Association of Schools & Colleges (NEASC). The Agency of Education and the State Board of Education accept NEASC accreditation as a rigorous standard that satisfies the state's regarding a school's financial capacity.

The 22 NEASC-accredited schools are the principal independent education providers in Vermont. The 22 approved independent schools without NEASC accreditation are substantially smaller. Details are shown in the table below:

| | Accredited Schools | | | Non-Accredited Schools | | |
|-------------------|--------------------|----------------|----------|------------------------|----------------|----------|
| | Total | Public Tuition | Public % | Total | Public Tuition | Public % |
| Total Enrollment | 4,588 | 2,589 | 56% | 1,106 | 120 | 11% |
| Median | 115 | 34 | | 33 | 4 | |
| Number of Schools | 22 | | | 22 | | |

The accredited schools enroll 91 percent – all but 120 -- of publicly tuitioned students attending approved independent schools. Because of their accredited status, their financial capacity is presumed to have been demonstrated beyond Vermont state standards.

The financial capacity discussions within the Study Committee apply to the 22 non-accredited schools, enrolling only 120 students with public tuition support.

These 22 schools range in total enrollment size from 4 students (Sugarwood School, Rutland) to 169 students (Orchard Valley Waldorf School, East Montpelier). Half of these schools enroll fewer than 33 students.

The risk exposure to taxpayers and to students involving financial failure of any of these 22 schools is very small, for two reasons. First, independent school closings have routinely been well managed. Though five small approved general education independents closed in the last eight years, none did so in anything other than an orderly manner and no taxpayer funds were lost. Second, the financial impact of a failure of a school with the median of four publically tuitioned students is minimal, one semester of tuition for a small handful of students. On top of that, of course, is the possibility of a lien on school assets or through use of the Vermont False Claims Act 32 V.S.A. §§ 630-640.

Because the financial capacity issue is very narrow and the actual risk very small, new financial capacity requirements should be narrowly tailored. And because resource constraints are a very significant factor in financial capacity determinations, requirements should be designed to minimize resource demands.

NEASC accreditation is too costly for the smaller independent schools. Creating a different yet burdensome financial capacity test that small schools would find difficult or impossible to meet would be an unnecessary and, as a practical matter, destructive response. And, while the Agency of Education has reviewed independent schools in the past, now neither it nor the State Board of Education have the resources needed to conduct financial capacity reviews.

New financial capacity requirements should therefore:

- ◆ Be narrowly tailored to the low risk of loss of public funds due to school failure; and
- ◆ Balance the gauging of financial capacity against the resource constraints of both the state and small independent schools seeking approval.

Financial Capacity Proposal

The independent schools community offers a three-point proposal to meet these constraints.

First, deem any of the following submissions as demonstrating financial capacity:

- ◆ a statement of financial capacity prepared by an accrediting agency (NEASC, e.g.), a licensed CPA or a peer reviewer; or
- ◆ an audit report; or
- ◆ an IRS Form 990 with an accompanying statement of capacity provided by a board of trustees.

No additional review or analysis would be required on the part of the state; financial capacity is verified by those with expertise, such as an accrediting agency, Certified Public Accountant, or independent peer reviewer, or attested to by a board of trustees having a fiduciary obligation.

Second, establish criteria for events that must be reported to the AOE within five days and which then could trigger inquiry into a school's financial capacity and possible subsequent action including conditional approval or denial of approval. Such events include:

- ◆ failure to pay federal/state payroll tax obligations;
- ◆ failure to make required retirement contributions;
- ◆ use of designated funds for non-designated purposes;
- ◆ withdrawal or conditioning of accreditation for financial reasons;
- ◆ filing a petition for bankruptcy.

Third, develop a state-level peer review process similar to that performed by NEASC, that would come into play at the request of the AOE should one of the above-described events occur at an approved independent school. This proposal accesses the expertise within the Council of Independent Schools (CIS)—the statutory advisory body to the AOE—whose members have from time to time been accessed by the Secretary for peer review activities. CIS members are heads of independent schools, some of whom are NEASC members who conduct reviews of independent schools for accreditation purposes. The review report would potentially find a lack of financial capacity, find that there is sufficient financial capacity or perhaps something in between. In the event the review report found something less than financial capacity it would, unless the review committee were to find no reasonable potential for remediation, set forth a plan for strengthening/insuring financial capacity.

Special Education and Open Enrollment

Analysis – The Independent Schools

Independent schools are prohibited from engaging in discriminatory admissions practices by federal and state nondiscrimination and public accommodations statutes. Independent schools must provide reasonable accommodation and it is impermissible for an independent school to ask direct or indirect questions about an applicant’s disability or to make unnecessary inquiries related to the existence of a disability.

In addition, federal law is clear that the obligation to provide a free appropriate public education (FAPE) through special education services and to disburse special education resources rests solely with the Local Education Authority (LEA, which in Vermont is the supervisory union). Federal law bars independent schools from having the direct access to special education resources that is enjoyed by public schools.

Eleven of Vermont’s 44 approved independent schools have special education approvals in some or all disability categories. These schools enroll 2,422 publicly-tuited students, which is 89 percent of all students publically-tuited to independent schools. Put differently, **only 287 publically-tuited students -- eleven percent -- attend an independent school currently without a special education approval.** Details are shown in the table below.

| | Number of Schools | Total Enrolled | Publicly Tuitioned | Public % |
|-----------------------------|--------------------------|-----------------------|---------------------------|-----------------|
| Schools with all Approvals | 6 | 2,651 | 2,099 | 79% |
| Schools with some Approvals | 5 | 532 | 323 | 61% |
| Schools without Approvals | 33 | 2,511 | 287 | 54% |

The five schools with approvals in fewer than all categories are approved in categories containing the largest populations of students with disabilities. This means a school with approvals in two categories is capable of providing special education services to 46 percent of all students with disabilities. A school with approvals in four categories is capable of serving 77 percent of all students with disabilities. The five least

populated disability categories together include only 2.9 percent of all Vermont students with disabilities.

While the data above show 33 schools without special education approvals, **one should not assume these schools are doing nothing to support students with disabilities or unusual needs.** Quite the contrary, many students eligible for special education or just short of eligibility are attending an independent school of their choice because their families believe the school is meeting their student's needs in ways they had not previously been met. In some cases, these are students whose families were dissatisfied with services provided in a general-purpose school. Many independent schools include within their mission a focus on highly individualized instruction and a culture of inclusion of students with unusual needs. Thus, while they may not have special education approvals, they are meeting often highly particularized needs that have not been or cannot be met in a general-purpose school.

Many approved independents include in their mission support for students who have done poorly in other schools. While many of these students are not special education-eligible, they definitely need a school with sensitivity to their struggles and the patience and expertise needed to reawaken them to their potential for success. Statistics on these schools do not show up in AOE reports, but the students often saved are very real.

Several of the 33 schools without special education approvals have so few publically-tuited students that they will find it easy to give up their general education approvals and stop taking publicly-tuited students if special education requirements are made too stringent. This would have the perverse effect of denying to students of low-income families access to the specialized education they need in order to thrive.

Analysis – The Resources and Burdens

Special education poses very challenging administrative burdens for independent schools. The independent schools community has pointed out that the AOE's administration of the independent school special education approval process has often been slow, particularly onerous for first-time applicants and sometimes inscrutable. This general regulatory situation has been a strong disincentive for schools to gain and manage special education programs.

More fundamentally, Independent schools have raised strong concerns regarding the lack of special education professionals—special educators, speech & language pathologists, etc. — to serve students in small independent schools. Both the AOE and the Council of Special Educators have acknowledged this reality. In fact, as a practical matter, the challenge is currently insurmountable.

Additionally, the independent schools have expressed concerns over the complex, lengthy process required to obtain special education approvals. Concerns have been expressed in the study committee with respect to the AOE's capacity to conduct special education approvals for independent schools expeditiously. It has also been

brought to the attention of the study committee that the process for approving independent schools for special education is more burdensome than it is for public schools.

Finally, the independent schools have raised issues with regard to the rate-setting procedures, particularly as they relate to the provision of special education services.

Given all of the foregoing, one may reach several general conclusions:

- ◆ Large independent schools with diverse mission objectives have already included special education services in their programs.
- ◆ Few publicly-tuited students are attending schools that are unapproved for any special education services.
- ◆ Smaller schools with limited administrative resources find the challenge of gaining special education approvals and managing the substantial administrative overhead to be more than they can reasonably manage.
- ◆ There is an acute shortage of qualified special educators, making it effectively impossible for the smaller independent schools to access this special category of educators, especially in view of the fact that need may arise infrequently or never in any given small independent school.
- ◆ The AOE's rate setting procedures are a further impediment to small independent schools offering special education services.
- ◆ Excessively stringent special education requirements likely will result in fewer school choice opportunities when schools choose to give up approvals, thus taking choice from moderate and low-income families.

Independent schools view the landscape described above as a very narrow issue. **The goal in their view should be to remove barriers to providing special education services to which students are entitled.** Streamlining the special education approval process and rate-setting process should be the first step.

The independent schools have proposed a collaborative resource sharing model with the LEAs. This model acknowledges two key realities: Special education is a student-based federal entitlement for students with disabilities; and professional special education resources are by federal law housed within the LEAs.

The members of the independent school community, like all professionals involved in this conversation, wish to insure that special education services are delivered properly and that the students in need of these services are well-served. This can be accomplished regardless of location assuming the proper staff is involved. In order for small independent schools to deliver these services, independent schools must have equal access to special education resources to which the students are entitled.

These two initiatives—removal of barriers and equal access to resources—would make it practically possible for those schools that are not currently approved for special education to provide services.

Independent schools (also) believe diversity in educational offerings is important.

Small independent schools tend to come into existence to meet particularized student needs that are not/cannot be met via general-purpose schools. They have expressed concerns about proposals that would create uniformity, or would undermine the good work that many independent schools are doing for students that have struggled in other settings. It does not make sense to force an independent school that is serving students well in an alternative model to conform to a special education model that is not right for the student as a condition of receiving public dollars. It is critical that these considerations not be lost in the conversation.

Special Education Proposal

Independent schools should have equal access to the special education funds and resources managed by Supervisory Unions, and the Agency of Education should simplify its rate-setting and either simplify or eliminate as unnecessary its approval processes so that schools are not deterred from engaging in special education due to unmanageable administrative burdens.

IEP Teams should give equal consideration to public and to independent schools when considering placement recommendations for disabled students eligible to choose an independent or public school.

Home LEAs should make available the necessary teachers, administrative support and other resources that make up the special education service entitlement of any student with a disability who chooses to enroll in an independent school.

LEAs, in consultation with independent schools, should adopt a standardized protocol for special education resource accountability and financial transactions. This requirement is intended to ease the administrative burden on independent schools that serve disabled students from multiple LEAs.

LEAs, in consultation with independent schools, should adopt a collaborative resource sharing model that addresses protocols for oversight and supervision of staff, compliance with school policies, etc.

The Agency of Education should fulfill its special education rate setting responsibilities in a timely manner, so that independent schools have adequate time before the beginning of a school year to arrange their services and manner of delivery. The Agency's recent difficulty in doing so have created notable inconvenience and significant added costs for schools currently providing special services and are a disincentive to other schools considering adding special education services.

A new independent school tuition rate ceiling formula that more properly compensates independent schools for educating publically-tuited students should be adopted. The current tuition rate-setting formula does not adequately provide for the added administrative overhead involved in the provision of special education services.

Conclusions

Often lost in this discussion is a sound understanding of the outcomes independent schools deliver for the young people we serve. The vast majority of publically-tuited students served are at schools that are both nationally accredited and are approved in all special education services. This is therefore a very narrow issue in terms of school size and number of publically-tuited students.

The independent schools community is committed to properly calibrated education reforms that offer strategies for demonstrating financial capacity as well as those that address questions about special education services.

The special education proposal in particular—to permit students with disabilities to enroll in any approved independent school—is a major change and is very responsive to the long-standing requests from the public education establishment.

Rough working draft of special education plan related to general education independent schools prepared by the Agency of Education and as amended (in red) by Vermont Council of Special Education Administrators

Approval

1. In order to be approved as an independent school eligible to receive public education funds, a school will have demonstrated an ability to serve students with disabilities. Specifically, it must:
 - a. demonstrate an understanding of special education requirements, including
 - i. provision of FAPE;
 - ii. provision of education in the least restrictive environment; and
 - iii. the characteristics and educational needs of students with all categories of disability **or suspected disability as** named in IDEA and Vermont State Board of Education (SBE) Rules; and
 - iv. procedural safeguards and parental rights, including discipline procedures, specified in federal and state law.
 - b. commit to implementing the individualized educational plans (IEPs) of its **students with** special education **needs** ~~students~~, providing the required services, and appropriately documenting the services and the student's progress;
 - c. have staff with the required licensure to provide special education.
 - d. agree to communicate with the responsible LEA (which is the student's home district) about the IEP, services provided and the student's progress, including when there is any concern about maintaining the student in the independent school in which the student is currently enrolled, recommended changes in service, and regarding students with suspected disabilities.**
 - e. commit to participate in dispute resolution as provided in federal and state law.
2. Commitment to these foundational special education requirements shall be incorporated into every agreement between the responsible LEA and an approved independent school.
3. An approved independent school that commits to this foundational level of special education preparedness 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 education funding.

Funding

1. Approved independent schools that have open enrollment policies and agree to serve all students with disabilities **in all categories of disability within the age or grade range served by the independent school** will receive the full general education tuition rate for all of its publicly funded students.
- ~~2.~~ Approved independent schools that do not have open enrollment policies or determine that its educational philosophy, resources or capabilities are inconsistent with enrollment of students with some ~~categories of~~ disabilities, will **not** receive tuition for ~~all of~~ its publicly funded students. ~~(not just~~

~~students with disabilities) at a rate that is 80 percent of the full general education tuition rate.~~

Placement and Location (this might need to go into ~~SPED~~ **the special education Rules**)

1. In accordance with federal and state law, the responsible LEA will offer a continuum of alternative placements (e.g., instruction in general education classes, **provision for supplementary services in conjunction with general education placement, resource room services, special classroom services,** special schools, home instruction, ~~provision for supplementary services in conjunction with general education placement~~) to a student with an IEP; these placements will be determined at the IEP meeting. There is no requirement for the LEA to offer a particular school for implementation of the placement. The starting point should always be the school the student would attend in the absence of a disability and ideally as close as possible to the student's home, unless the parents agree to another location.
2. Enrollment in an approved independent school may occur and be publicly funded if the IEP team for the student determines that the approved independent school offers a placement consistent with the student's IEP and in the least restrictive environment. This determination will be based on the approved independent school demonstrating that it has the requisite staff and capability to serve the student according to the student's IEP. **As per Vermont special education rule the decision is made by the LEA through the IEP Team process; if there is disagreement the LEA representative makes the decision.**
3. An approved independent school that demonstrates it has the requisite staff and capability ~~and~~ to provide special education and related services to a student may bill the responsible LEA for special education and related services provided in accordance with the IEP. Reimbursement for services beyond those provided in the general education classroom will be based on ~~rates~~ **the direct costs** for services actually provided the student **consistent with the AOE Technical Manual for special education excess cost accounting and approved by the Agency of Education.** ~~for services actually provided to the student.~~ The school must provide detailed invoices to the LEA in advance of reimbursement.
4. In cases where the responsible LEA district provides a service that is necessary to implement the student's IEP, the approved independent school will not be paid or reimbursed for such service.
5. Decisions about how special education services will be provided and specifically, whether to provide the services directly or through coordination with the approved independent school's special education staff will be made by the responsible LEA representative.
6. After an approved independent school has accepted a student with disabilities, representatives of the school will attend all **EPT (Evaluation and Planning Team) and** IEP meetings for that student. Independent school representatives

may not attend IEP meetings prior to accepting a student, absent parental consent, as this would be a violation of FERPA.

7. Unilateral placements and related equitable “proportionate share” services will continue to be governed by federal and state law.
8. Responsible LEAs may limit the number of general education schools to which it will send its publicly funded students. However, if an IEP team determines that a student with a disability requires a placement outside of the general education schools to which the responsible LEA sends its other publicly funded students, the LEA shall provide that placement.
9. If school choice in a particular district includes all non-sectarian approved independent schools in the state for its students, then the same options should be available to students with disabilities.
10. As required by state and federal law a continuum of alternative placements must be available to students with disabilities in order to provide an appropriate education. Vermont approved independent schools serving students with disabilities exclusively are part of that required continuum. State approved independent schools serving students with disabilities exclusively are subject to different requirements from the independent general education schools. Some key distinctions in requirements need to be clarified in state regulation:
 - These specialized schools must be approved for the specific disability categories served, and are not required to serve all categories of disability.
 - Tuition rate setting processes established by the AOE apply. Excess costs for individual students, exceeding the approved tuition rates, are subject to the process identified in #3 above.