

1 Introduced by Senator Baruth

2 Referred to Committee on

3 Date:

4 Subject: Education; approved independent schools; financial capacity

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

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

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

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

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

1 and ~~special services~~ compliance with 504 Plans, public accommodation and
2 anti-discrimination requirements that are in accordance with any State or
3 federal law or regulation. Approval may be granted without State Board
4 evaluation in the case of any school accredited by a private, State, or regional
5 agency recognized by the State Board for accrediting purposes.

6 * * *

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

17 * * *

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

1 (i) a statement that a school or its umbrella organization has of
2 financial capacity to meet its stated objectives for the school's current or
3 immediately preceding fiscal year issued by:

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

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

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

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

14 (iii) IRS Form 990 for the school's current or immediately
15 preceding fiscal year for the school or its umbrella organization accompanied
16 by a notarized letter summarizing the financial status and affirming the
17 financial capacity to meet stated objectives within the present or prior fiscal
18 year signed by the board of directors or governing body.

19 (B)(i) The State Board shall find that an independent school that
20 submits any of the documentation under subdivision (A) of this subdivision (8)

1 has demonstrated the financial capacity for approval under this subsection, ~~if it~~

2 ~~finds that:~~

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

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

10 ~~(ii) Nothing in this section prohibits an independent school from~~
11 ~~voluntarily submitting additional information related to its financial capacity to~~
12 ~~the State Board or prohibits the State Board from finding that the school has~~
13 ~~demonstrated its financial capacity based upon this additional information.~~

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

20 ~~(iv) The State Board may, based on reasonable and clearly stated~~
21 ~~evidence, require an independent school that is seeking approval for the first~~

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

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

18 (D) As used in this subsection, a triggering event which may give rise
19 to a reasonable belief that the school's ~~the term "financially impaired~~ financial
20 capacity to meet stated objectives is in question" means includes:

1 ~~(i) the school's failure to pay debts as they become due in the~~
2 ~~ordinary course of business, including the school's failure to meet its payroll~~
3 ~~obligations as they are due, to pay federal or State payroll tax obligations as~~
4 ~~they are due, or to pay any of its other expenses within 30 days of their due~~
5 ~~date;~~

6 ~~(ii) the school's failure to comply with the financial terms of its~~
7 ~~debt obligations, including the school's failure to make interest or principal~~
8 ~~payments as they are due or to maintain any required financial ratios pay~~
9 ~~federal or State payroll tax obligations as they are due taking into account~~
10 ~~permissible extension periods;~~

11 ~~(iii) the school's failure to make required retirement contributions;~~

12 ~~(iv) the school's use of designated funds for non-designated uses;~~

13 ~~(iii v) the withdrawal or conditioning of the school's accreditation~~
14 ~~on financial grounds by a private, State, or regional agency recognized by the~~
15 ~~State Board for accrediting purposes; or~~

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

17 ~~(vi) the school's filing of a petition for bankruptcy under state or~~
18 ~~federal laws.~~

19 ~~(E) If the State Board reasonably believes that an approved~~
20 ~~independent school lacks financial capacity to meet its stated objectives, as a~~
21 ~~result of a triggering event specified in subdivision 8(D), during the period of~~

1 its approved status ~~due to its financial impairment~~, then the State Board shall
2 notify the school in writing of the reasons for this belief and permit the school
3 a reasonable opportunity to respond. If the State Board, after having provided
4 the school a reasonable opportunity to respond, does not find that the school
5 has satisfactorily responded or demonstrated its financial capacity, the State
6 Board may, with the written consent of the school, request the [Council of
7 Independent Schools] to establish a review team and conduct a school visit to
8 assess the school’s financial capacity and submit a report of its findings and
9 recommendations to the State Board. The State Board may also require the
10 approved independent school to submit updated documentation under
11 subdivision (A) of this subdivision (8), provided that the school shall not be
12 required to provide this documentation more than once in any 12-month
13 period. If the State Board concludes that an approved independent school
14 lacks financial capacity to meet its stated objectives during the period of its
15 approved status, ~~due to its financial impairment, the State Board may take any~~
16 ~~action that is authorized by this section~~ The Board may impose conditions on
17 the school’s approval in accordance with subdivision (8)((B)(iii), however, the
18 Board must first consider measures to rehabilitate a school’s lack of financial
19 capacity to meet its stated objectives. The Board’s actions must be narrowly
20 tailored to minimize disruption and discontinuation of the educational services
21 provided to enrolled students of the independent school.

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

6 (G) Information provided by an independent school to demonstrate
7 its financial capacity under this subsection that is not already in the public
8 domain is exempt from public inspection and copying under the Public
9 Records Act and shall be kept confidential in accordance with 1 V.S.A.
10 §317(c)(O). Information reviewed or received by a peer review team or
11 independent reviewer appointed pursuant to subdivision (8) shall not be
12 disseminated except to the Agency of Education and State Board of Education
13 and only as may be necessary to any findings regarding a school's financial
14 capacity to meet its stated objectives.

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on passage.