

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 that are in accordance with any State or federal law or  
2 regulation. Approval may be granted without State Board evaluation in the  
3 case of any school accredited by a private, State, or regional agency recognized  
4 by the State Board for accrediting purposes.

5 \* \* \*

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

16 \* \* \*

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

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

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

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

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

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

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

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

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

19                   (II) the documentation does not contain information that causes  
20 the State Board to believe that the school would likely be unable to maintain its

1 financial capacity to meet its stated objective during the period of State Board  
2 approval.

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

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

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

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

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

9 (D) As used in this subsection, the term “financially impaired”  
10 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, to pay federal or State payroll tax obligations as  
14 they are due, or to pay any of its other expenses within 30 days of their due  
15 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 permit  
6                   the school a reasonable opportunity to respond. If the State Board, after having  
7                   provided the school a reasonable opportunity to respond, does not find that the  
8                   school has satisfactorily responded or demonstrated its financial capacity, the  
9                   State Board may, with the written consent of the school, request the [Council  
10                   of Independent Schools] to establish a review team and conduct a school visit  
11                   to assess the school’s financial capacity and submit a report of its findings and  
12                   recommendations to the State Board. The State Board may also require the  
13                   approved independent school to submit updated documentation under  
14                   subdivision (A) of this subdivision (8), provided that the school shall not be  
15                   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 Vermont Department of Financial Regulation.

4 (G) Information provided by an independent school to demonstrate  
5 its financial capacity under this subsection 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.