

# Vermont Statute

## Title 16: Education

### Chapter 003: State Board of Education

#### Subchapter 001 : General Provisions

(Cite as: 16 V.S.A. § 166)

- **§ 166. Approved and recognized independent schools**

(a) Authority. An independent school may operate and provide elementary education or secondary education if it is either approved or recognized as set forth in this section.

[ Subsection (b) effective until July 1, 2023; see also subsection (b) effective July 1, 2023 .]

(b) Approved independent schools. 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 the Board's rules for approved independent schools. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school have 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. 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.

(1) On application, the State Board shall approve an independent school that offers kindergarten but no other graded education if it finds, after opportunity for hearing, that the school substantially complies with the Board's rules for approved independent kindergartens. The State Board may delegate to another State agency the authority to evaluate the safety and adequacy of the buildings in which kindergartens are conducted, but

shall consider all findings and recommendations of any such agency in making its approval decision.

(2) Approvals under this subsection (b) shall be for a term established by rule of the Board but not greater than five years.

(3) An approved independent school shall provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under this section, and a copy of this section. Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. § 2005.

(4) Each approved independent school shall provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved independent school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in section 1126 of this title.

(5) The State Board may revoke, 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.

(6) This subdivision (6) applies to an independent school located in Vermont that offers a distance learning program and that, because of its structure, does not meet some or all the rules of the State Board for approved independent schools. In order to be approved under this subdivision, a school shall meet the standards adopted by rule of the State Board for approved independent schools that can be applied to the applicant

school and any other standards or rules adopted by the State Board regarding these types of schools. A school approved under this subdivision shall not be eligible to receive tuition payments from public school districts under chapter 21 of this title.

(7) Approval for independent residential schools under this subsection is also contingent upon proof of the school's satisfactory completion of an annual fire safety inspection by the Department of Public Safety or its designee pursuant to 20 V.S.A. chapter 173, subchapter 2. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

(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.

[ Subsection (b ) effective July 1, 2023; see also subsection (b) effective until July 1, 2023 .]

(b) Approved independent schools. 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 program 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 program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school have 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. 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.

(1) On application, the State Board shall approve an independent school that offers kindergarten but no other graded education if it finds,

after opportunity for hearing, that the school substantially complies with the Board's rules for approved independent kindergartens. The State Board may delegate to another State agency the authority to evaluate the safety and adequacy of the buildings in which kindergartens are conducted, but shall consider all findings and recommendations of any such agency in making its approval decision.

(2) Approvals under this subsection (b) shall be for a term established by rule of the Board but not greater than five years.

(3) An approved independent school shall provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under this section, and a copy of this section. Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. § 2005.

(4) Each approved independent school shall provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved independent school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in section 1126 of this title.

(5) The State Board may revoke, 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.

(6) This subdivision (6) applies to an independent school located in Vermont that offers a distance learning program and that, because of its

structure, does not meet some or all the rules of the State Board for approved independent schools. In order to be approved under this subdivision, a school shall meet the standards adopted by rule of the State Board for approved independent schools that can be applied to the applicant school and any other standards or rules adopted by the State Board regarding these types of schools. A school approved under this subdivision shall not be eligible to receive tuition payments from public school districts under chapter 21 of this title.

(7) Approval for independent residential schools under this subsection is also contingent upon proof of the school's satisfactory completion of an annual fire safety inspection by the Department of Public Safety or its designee pursuant to 20 V.S.A. chapter 173, subchapter 2. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

(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.

(c) Recognized independent schools. Upon filing an enrollment notice, a recognized independent school may provide elementary or secondary education in Vermont. The enrollment notice shall be on a form provided by the Secretary and shall be filed with the Secretary no earlier than three months before the beginning of the school year for the public schools in the town in which the applicant proposes to locate.

(1) The enrollment notice shall contain the following information and assurances:

(A) a statement that the school will be in session an amount of time substantially equivalent to that required for public schools;

(B) a detailed description or outline of the minimum course of study for each grade level the school offers, and how the annual assessment of each student will be performed; and

(C) assurances that:

(i) the school will prepare and maintain attendance records for each student enrolled or regularly attending classes;

(ii) at least once each year, the school will assess each student's progress, and will maintain records of that assessment, and present the result of that assessment to each student's parent or guardian;

(iii) the school's educational program will include the minimum course of study set forth in section 906 of this title;

(iv) the school will have teachers and materials sufficient to carry out the school's educational program; and

(v) the school will meet such State and federal laws and regulations concerning its physical facilities and health and safety matters as are applicable to recognized independent schools.

(2) If the Secretary has information that creates significant doubt about whether the school would be able to meet the requirements set forth in this subsection (c), the Secretary may call a hearing. At the hearing, the school shall establish that it can meet the requirements for recognized independent schools. Failure to do so shall result in a finding by the Secretary that the school must take specified action to come into compliance within a specified time frame or the children enrolled must attend another recognized independent school, a public school, an approved independent school, or a home study program, or be declared truant unless absent with legal excuse.

(3) A recognized independent school shall provide to each student's parent or guardian a copy of its currently filed statement of objectives and a copy of this section. The copy shall be provided when the student enrolls or before September 1, whichever comes later. Failure to comply with this subsection may create a permissible inference of false advertising in violation of 13 V.S.A. § 2005.

(4) A recognized independent school shall renew its enrollment notice annually. An independent school shall be recognized for a period not to exceed five years by the Secretary without need for filing an annual enrollment notice if:

(A) it is recognized by an organization approved by the State Board for the purpose of recognizing such school; or

(B) it is accredited by a private, state, or regional agency approved by the State Board for accrediting purposes; provided, however, nothing in this subdivision (4) shall be construed to prohibit the Secretary from initiating a hearing under this subsection (c).

(5) If the Secretary has information that creates significant doubt about whether the school, once in operation, is meeting the requirements for recognized independent schools, the Secretary may call a hearing. At the hearing, the school shall establish that it has met the requirements for recognized independent schools. Failure to do so shall result in a finding by the Secretary that:

(A) the school may not be in operation for the remainder of the school year and that the children are truant unless absent with legal excuse

or enrolled in a public school, an independent school, another recognized independent school, or a home study program; or

(B) the school must take specified action to come into compliance within a specified time frame or the school will not be permitted to operate for the remainder of the school year.

(6) Each recognized independent school shall provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the recognized independent school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in section 1126 of this title.

(7) After the filing of the enrollment notice or at a hearing, if the school is unable to comply with any specific requirements due to deep religious conviction shared by an organized group, the Secretary may waive such requirements if he or she determines that the educational purposes of this subsection are being or will be substantially met.

(d) Council of Independent Schools. A Council of Independent Schools is created consisting of 11 members, no fewer than three of whom shall be representatives of recognized independent schools. The Secretary shall appoint nine members from within the independent schools' community. The Secretary shall appoint two members from the public-at-large. Each member shall serve for two years and may be reappointed for up to an additional two terms. The Council shall adopt rules for its own operation. A chair shall be elected by and from among the members. The duties of the Council shall include advising the Secretary on policies and procedures with respect to independent schools. No hearing shall be initiated under this section before the State Board or by the Secretary until the recommendations of the Council have been sought and received. The recommendations of the Council, including any minority reports, shall be admissible at the hearing.

(e) Harassment, hazing, and bullying policies. The board of trustees of an approved or recognized independent school operating in Vermont shall adopt harassment, hazing, and bullying prevention policies, establish

procedures for dealing with harassment, hazing, and bullying of students, and provide notice of these. The provisions of chapter 9, subchapter 5 of this title for public schools shall apply to this subsection, except that the board shall follow its own procedures for adopting policy.

(f) Tuition bills. An approved independent school that accepts students for whom the district of residence pays tuition under chapter 21 of this title shall bill the sending district monthly for a State-placed student and shall not bill the sending district for any month in which the State-placed student was not enrolled.

(g) Tuition students; assessments. An approved independent school that accepts students for whom the district of residence pays tuition under chapter 21 of this title shall use the assessment or assessments required under subdivision 164(9) of this title to measure attainment of standards for student performance of those students. In addition, the school shall provide data related to the assessment or assessments as required by the Secretary. (Amended 1981, No. 151 (Adj. Sess.), § 8; 1983, No. 248 (Adj. Sess.), § 3; 1989, No. 44, § 1; 1993, No. 162 (Adj. Sess.), § 3; 1995, No. 157 (Adj. Sess.), § 2; 1997, No. 60, § 5, eff. June 26, 1997; 1997, No. 84 (Adj. Sess.), § 2; 1999, No. 120 (Adj. Sess.), § 5; 2007, No. 66, § 2; 2007, No. 138 (Adj. Sess.), § 1, eff. May 9, 2008; 2009, No. 153 (Adj. Sess.), § 21b; 2013, No. 92 (Adj. Sess.), § 13, eff. Feb. 14, 2014; 2017, No. 173 (Adj. Sess.), § 20, eff. May 25, 2018; 2017, No. 173 (Adj. Sess.), § 20a, eff. July 1, 2023; 2019, No. 131 (Adj. Sess.), § 54; 2021, No. 20, § 51.)