



Vermont Schools

Approved Independent [Private]
Schools Are Not Subject to Most of the
Statutes and Rules That Govern Public
Schools



Mission Statement

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Dear Colleagues,


During the 2018/2019 school year, about 3,400 students whose education was publicly funded were enrolled in 65 approved independent (private) schools. We were interested in determining how State statutes and rules treat such independent schools differently than public schools.¹ This is the first of two reports on approved independent schools. Our second report will address trends in enrollment and expenditures, tuition, and the approval process. Approval is a requirement for an independent school to receive publicly funded tuition.

Both public and approved independent schools are subject to many statutes and rules but these requirements can differ significantly. The State's authority to assess independent schools' compliance with legal requirements is one such difference. Vermont statute requires the Secretary of Education to "supervise and direct the execution of the laws relating to the public schools and ensure compliance." The statute does not contain such language for the Secretary's duties pertaining to independent schools. Instead, the primary tool of State oversight is the initial independent school approval process and the subsequent renewals. Under this process the Agency of Education reviews a school's application and the Secretary makes a recommendation to the State Board of Education, which may grant approval for up to five years. Approved independent schools are also required to notify the Agency of Education if they experience certain negative financial events, which can trigger a review by the State Board. If the State Board concludes that an approved independent school lacks the financial capacity to meet its stated objectives, it can revoke, suspend, or impose conditions on the approval of the independent school.

In terms of other requirements, in general, public schools face more mandates than do approved independent schools. Notable categories of requirements with major differences are public participation and transparency and budget and financial management in that public schools face public scrutiny to an extent not required of approved independent schools. In particular, public schools, but not approved independent schools, are required to hold public meetings, submit financial information to the public, seek voter approval of their budgets, and make records publicly available.

This report is available on the state auditor's website, <http://auditor.vermont.gov/>.

Sincerely,



DOUGLAS R. HOFFER
State Auditor

¹ We did not include special education in our work because there are changes to the statute pertaining to special education at approved independent schools effective July 1, 2023.

ADDRESSEES

The Honorable Mitzi Johnson
Speaker of the House of Representatives

The Honorable Tim Ashe
President Pro Tempore of the Senate

The Honorable Phil Scott
Governor

Ms. Susanne Young
Secretary, Agency of Administration

Mr. Adam Greshin
Commissioner, Department of Finance and Management

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Secretary of Education

Contents

	Page
Highlights	1
Background	3
Objective 1: Requirements for Approved Independent Schools and Public Schools Can Be Significantly Different	3
State Supervision of Compliance with Requirements	4
Categories with Significant Requirement Differences	5
Categories with Largely Similar Requirements	15
Conclusions	18
Management's Comments	18
Appendix I: Scope and Methodology	19
Appendix II: Abbreviations	20
Appendix III: Management's Comments from the Agency of Education	21

Highlights

In Vermont, school district² voters decide whether the district will operate a school or pay tuition for its students to attend school for some or all grades. If a school district does not operate a public school, it can pay to send students to independent (non-public) schools approved by the State Board of Education (hereafter referred to as the State Board) or public schools in other districts. Parents from districts that operate schools may also petition to send students to other public or independent schools.

During the 2018/2019 school year, 3,407 of 78,773 (4 percent) students whose education was publicly funded were enrolled in 65 approved independent schools. Sixty percent of the publicly funded students enrolled in these schools attended four schools—Burr and Burton Academy, Lyndon Institute, St. Johnsbury Academy, and Thetford Academy. Although not part of the public school system, for some independent schools, the majority of the enrolled students are funded from public tuition.³

The SAO was interested in how statutes and rules treat public and approved independent schools. Accordingly, our objective was to identify differences in Vermont statute and rule requirements pertaining to public schools and approved independent schools that receive public tuition dollars for general education. Special education was not included in the scope of this audit because changes to the statute pertaining to special education at approved independent schools become effective July 1, 2023.⁴

The SAO employed a legal firm to assist in this analysis and to categorize the requirements.⁵ The SAO does not opine on whether the public or approved independent schools are meeting these requirements nor whether the approved independent schools perform some or all of the activities that are only required of public schools.

This is the first of two reports on approved independent schools. A second report will address trends in enrollment and expenditures, tuition amounts, and the approval process.

² A school district is a public governing unit whose boundaries can encompass one or more towns or portions of towns that is organized to provide for the education of resident students in all grades or some subset of grades. A school district is responsible for providing for the education of all students residing within its boundaries.

³ [Presentation](#) on July 19, 2017 by Seth Bongartz, Michael Livingston, and Elizabeth Shane, representatives of the independent school community, before the Approved Independent Schools Study Committee established by Act 49 (2017).

⁴ [Act 173](#) (2018) as amended by [Act 112](#) (2020).

⁵ Appendix I details the scope and methodology of the audit. Appendix II contains a list of abbreviations used in this report.

Objective 1 Finding

There are significant differences in the statute and rule requirements for Vermont public and approved independent schools for general education. The State's authority to assess independent schools' compliance with legal requirements is one such difference. Vermont statute requires the Secretary of Education to "supervise and direct the execution of the laws relating to the public schools and ensure compliance." The statute does not contain such language for the Secretary's duties pertaining to independent schools. Instead, State oversight occurs as part of the independent school approval process outlined in statute and rule. If an independent school seeks to be designated as an approved independent school, it submits an application asserting compliance with specific requirements to the Agency of Education (AOE). AOE, in turn, reviews the application and the Secretary submits a recommendation to the State Board, which may grant initial approval for up to two years and renewals for up to five years. In addition, the State Board has the authority to revoke, suspend, or impose conditions on its approval under certain conditions, such as failure to comply with statutory requirements or the Board's rules for approved independent schools.

Broadly, public schools face more statutory and rule requirements than approved independent schools. For example, Vermont statute requires public participation in the public school system and sets forth various processes that must be followed. Notably, 1 V.S.A. §312 and §313 require that all meetings and decisionmaking by a public body, such as school boards, be open to the public except if they meet the criteria for an executive session. Vermont statute also prescribes the establishment, duties, and authorities for various organizations that govern and manage the public school system, such as school boards.

Other categories of requirements contain commonality for public and approved independent schools but are still significantly different. For example, both public and approved independent schools are required to meet the minimum course of study in 16 V.S.A. §906 (e.g., reading) but only public schools must meet education quality standards. In accordance with the education quality standard statute, AOE evaluates public schools for academic proficiency, high quality staffing, personalization, safe and healthy schools, and investment priorities and publishes the results.⁶ There are also significant differences in public and approved independent school requirements pertaining to budgeting and financial management, personnel, health and wellness, and maintenance and construction of buildings.

⁶ An independent school may participate in this process and be designated as an "independent school meeting education quality standards." As of mid-December 2020, AOE had not evaluated any independent schools against these standards.

Background

Vermont statute requires school districts⁷ to maintain public elementary (kindergarten to sixth grade) and secondary or high schools (seventh to twelfth grade) or to pay tuition for their students to attend a public school in another district or an approved independent school.⁸ Vermont has 109 school districts and two interstate school districts⁹ of which 45 pay tuition rather than operate schools for some or all grade levels.¹⁰ According to the Joint Fiscal Office, only Vermont and Maine offer such a town tuitioning program.¹¹

By law, an independent school may operate and provide elementary and/or secondary education if it is either recognized or approved.¹² School districts are not authorized to pay publicly funded tuition to recognized independent schools but can pay tuition to approved independent schools.¹³

In school year 2018/2019, 3,407 students were enrolled in 65 Vermont approved independent schools at public expense.¹⁴ This constitutes 4 percent of the 78,773 publicly funded students enrolled that year.

Objective 1: Requirements for Approved Independent Schools and Public Schools Can Be Significantly Different

While both are subject to many statutes and rules, the requirements for public and approved independent schools can be significantly different. One difference pertains to State supervision of compliance with requirements. We characterized other Vermont statutes and rules in categories to highlight differences. In general, public schools face more mandates than do approved independent schools but it varies greatly by category. Two categories of requirements—governance and public participation and transparency—have

⁷ According to [16 V.S.A. §11\(a\)\(10\)](#), the term school district “means town school districts, union school districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board.”

⁸ [16 V.S.A. §821](#) and [§822](#). These statutes also allow tuition to be paid to independent schools meeting education quality standards.

⁹ The two interstate school districts are the Dresden Interstate School District and the Rivendell Interstate School District, which operate schools located in Vermont and New Hampshire.

¹⁰ These numbers are from an AOE draft analysis as of July 1, 2020.

¹¹ [Public Funding of Independent School Tuition and Special Education Services](#) (Vermont Legislative Joint Fiscal Office, April 25, 2017).

¹² [16 V.S.A. §166\(a\)](#).

¹³ [16 V.S.A. §828](#) and [Rule 2224](#).

¹⁴ There are other approved independent schools. Some approved independent schools are sectarian and generally do not receive public tuition. A Vermont Supreme Court decision (*Chittenden School Dist. V. Dept. of Educ.*, 738 A.2d 539 (Vt. 1999)) concluded that a school district violates the State’s constitution when it reimburses tuition for a sectarian school in the absence of safeguards against the use of such funds for religious worship.

no common statutes or rules for public and approved independent schools. Other categories of requirements, such as budgeting/financial management and curriculum/instruction have significant requirement differences between these two school types. In contrast, statutes and rules pertaining to students, safety and security, and career and technical education apply many of the same or similar requirements on both public and approved independent schools.

State Supervision of Compliance with Requirements

The Secretary of Education’s general duties require him or her to “supervise and direct the execution of the laws relating to the public schools and ensure compliance.”¹⁵ There are no such general duties pertaining to the Secretary’s supervision of independent schools. Instead, AOE and the State Board address independent school compliance with legal requirements through the approval process laid out in statute and rule.

Vermont statute and rule contain the process for approving independent schools.¹⁶ Specifically, the school submits an application to AOE that requires the independent school certify compliance with various laws and rules. AOE reviews the application and, in some cases, conducts site visits.¹⁷ The Secretary of Education then submits a recommendation to the State Board, which decides whether to grant approval to the school.¹⁸ The Board may grant initial approval for up to two years and renewals for up to five years.¹⁹ The Board has the authority to revoke, suspend, or impose conditions on its approval under certain conditions, such as failure to comply with statutory requirements or the Board’s rules for approved independent schools.²⁰

The requirements that an independent school must meet to be an approved independent school are included in the other categories of requirements explained in the remainder of this section.

¹⁵ [16 V.S.A. §212\(5\)](#).

¹⁶ [16 V.S.A. §166\(b\)](#) and [Rule Series 2200](#).

¹⁷ The extent of the review differs based on whether the school is accredited by a State Board-approved organization. We plan to issue a report on the approval process shortly.

¹⁸ [16 V.S.A. §166\(b\)](#) states that a “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 [see sidebar on page 12] and that it substantially complies with the Board’s rules for approved independent schools.”

¹⁹ [Rule 2227](#).

²⁰ [16 V.S.A. §166\(b\)\(5\)](#). Other circumstances in which these actions can be taken are included in the remainder of this section.

Categories with Significant Requirement Differences

Governance

Title 16 prescribes the establishment, requirements, and authorities for various organizations that govern and manage the public school system, including the make-up, election, and powers of local school boards.²¹ The Vermont School Boards Association summarizes the responsibilities of local school boards as covering six areas:

- Engaging the community to establish a vision for the school district,
- Adopting policies,
- Hiring a superintendent and establishing clear expectations,
- Developing a budget and providing financial oversight,
- Monitoring progress towards the vision, and
- Operating in an ethical and effective manner.²²

There are no equivalent governance requirements for independent schools. The rule pertaining to independent school approval requires that applications for approval include a description of the independent school's organizational plan, to include its governance and the names and addresses of the governing board.²³ However, the State Board's criteria for approving an independent school does not include an assessment of the independent school's governance structure.²⁴

Public Participation and Transparency

Table 1 shows the many public participation and transparency requirements to which public schools, but not approved independent schools, are subject.

²¹ [16 V.S.A. §11\(a\)\(9\)](#) defines school board as a the "board of school directors elected to manage the schools of a school district, the prudential committee of an incorporated school district, the supervisory union board of directors, and the supervisors of unorganized towns and gores." [16 V.S.A. §11\(a\)\(10\)](#), defines the term school district to mean "town school districts, union school districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board."

²² [Testimony](#) before the House Education Committee by the Executive Director of the Vermont School Boards Association, January 17, 2019.

²³ [Rule 2225.4](#).

²⁴ [Rule 2226](#).

Table 1: Comparison of Selected Public and Approved Independent School Requirements Related to Public Participation and Transparency

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> All meetings of a public body, which includes school boards, are to be warned and open to the public. No resolution, rule, regulation, appointment, or formal action is binding unless made at an open meeting. There is an exception for those meetings and decisions satisfying the criteria for an executive session. Minutes shall be taken of all meetings of public bodies, which shall be a public record. 1 V.S.A. §312 and §313.^a 	
<ul style="list-style-type: none"> Public access to records requirements. 1 V.S.A. Chapter 5, Subchapter 3. 	<ul style="list-style-type: none"> Financial documents provided by approved independent schools that are shared with the State Board or its financial capacity review team because they are a required financial reporting event are exempt from the Public Records Act unless those documents are already in the public domain and must be kept confidential. 16 V.S.A. §166(b)(8).
<ul style="list-style-type: none"> Public bidding for items or services and for contract award requirements. 16 V.S.A. §559 and Rule Series 9000. 	
<ul style="list-style-type: none"> Leases of real property for more than three years and building or site purchases or disposal requires voter approval. 16 V.S.A. §562. 	
<ul style="list-style-type: none"> Prohibits soliciting or accepting a gift or compensation for “recommending or voting on any finding, ruling, decision, or report, or voting to procure any service, thing, or supply purchased with public funds.” No school board or supervisory union board member shall vote on any contract or purchase in which he or she has a direct or indirect interest. 16 V.S.A. §557. Prohibits soliciting or accepting bribes. 13 V.S.A. §1102. 	
<ul style="list-style-type: none"> Prohibits soliciting or accepting kickbacks. 13 V.S.A. §1106 and §1107. 	<ul style="list-style-type: none"> Prohibits soliciting or accepting kickbacks. 13 V.S.A. §1108.
	<ul style="list-style-type: none"> Must provide an accurate statement of approval status to parents or guardians prior to accepting money for a student. 16 V.S.A. §166(b)(3).

^a The State Board of Education posts its upcoming meetings, agendas, and minutes on its [website](#). Such documents include State Board decisions related to the approval of independent schools.

Budgeting and Financial Management

As shown in Table 2, the public school system is required to maintain financial systems that meet certain internal control and accounting standards and to have audited financial statements. They are also required to report financial information to AOE and the public. In general, approved independent schools do not face such requirements but they must have the financial capacity to carry out their education purposes for the period of the approval.²⁵ Approved independent schools must notify AOE if they experience certain negative financial events, such as a failure to meet payroll obligations or file Federal or State tax returns.²⁶ Should such a negative financial event occur, the statute lays out a process for the State Board to follow, which includes notifying the school of its concern and permitting the school to respond and may involve convening a review team.²⁷ Ultimately, if the State Board concludes that an approved independent school lacks the financial capacity to meet its stated objectives, it can revoke, suspend, or impose conditions on the approval of the independent school.²⁸

Table 2: Comparison of Selected Public and Approved Independent School Requirements Related to Budgeting and Financial Management

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> Supervisory unions, school districts, and other recipients of Federal funds to provide reports to AOE as may be required to support an audit of such funds. 16 V.S.A. §42. 	<ul style="list-style-type: none"> Recipients of Federal funds to provide reports to AOE as may be required to support an audit of such funds. 16 V.S.A. §42.
<ul style="list-style-type: none"> Accounting systems must meet governmental generally accepted accounting principles for state and local governments and follow the State Board’s financial accounting criteria. Rule 3250. 	

²⁵ [16 V.S.A. §166\(b\)\(8\)](#) and [Rule 2226.11](#).

²⁶ The statute requires approved independent schools to notify AOE within five days after its knowledge of the event “unless the failure is *de minimis*.” The statute does not define “*de minimis*.”

²⁷ [16 V.S.A. §166\(b\)\(8\)](#).

²⁸ [16 V.S.A. §166\(b\)\(5\)](#).

Public Schools	Approved Independent Schools
<p>School Districts</p> <ul style="list-style-type: none"> • Restricts school districts from receiving State aid for public education unless it complies with provisions of the law for teachers' salaries, appointment of superintendents, providing financial reports to AOE, and other legal requirements and requires that this funding only be used for legitimate education expenses. 16 V.S.A. §4003 and 4029. • Authorizes and sets requirements for the school district electorate to vote for the monies to support the schools. 16 V.S.A. §428, §511, §562(8), and §711a. • The school district treasurer shall keep financial records of cash receipts and disbursements and shall make those records available to the board of school directors or the supervisory union board. 16 V.S.A. §426(d), §492(a), and §706q(a). • The school board shall establish and maintain a system for receipt, deposit, disbursement, accounting, control, and reporting procedures established by the State Board and ensure that all payments are lawful and in accordance with a budget adopted or amended by the board. 16 V.S.A. §563(8). • The school board shall establish a system of accounts for the proper control and reporting of the district's finances and for stating its annual financial condition. 16 V.S.A. §563(9). • The school board shall prepare and distribute to the electorate a report on the conditions and needs of the district school system. 16 V.S.A. §563(10). • The school board shall prepare and distribute annually a proposed budget for the next school year. 16 V.S.A. §563(11). • Sets requirements for surplus funds. 16 V.S.A. §567. • Sets requirements for the circumstances in which publicly funded tuition should be paid to public and approved independent schools and prescribes criteria for the amount the school district is to pay. 16 V.S.A., Chapter 21. 	

Public Schools	Approved Independent Schools
<p>Supervisory Unions and/or Districts</p> <ul style="list-style-type: none"> Supervisory unions/districts shall establish and implement a plan for receiving and disbursing Federal and State funds in accordance with criteria established by the State Board and such funding shall be administered in accordance with the plan. 16 V.S.A. §261a(a)(4) and 16 V.S.A. §4002. Supervisory unions shall annually submit to the board of each member school district a summary report of financial operations for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the ensuing school year. 16 V.S.A. §261a(a)(10). Annually, the supervisory union/district board shall employ public accountants to audit the financial statements of the supervisory union and its member districts. 16 V.S.A. §323. Superintendents shall submit required budgetary and financial operations reports to AOE. 16 V.S.A. §242(4). Superintendents shall complete and provide an internal control checklist to the supervisory union/district board, which shall review it. 16 V.S.A. §242a. 	<ul style="list-style-type: none"> Schools must have the financial capacity to carry out its educational purposes for the period of approval. 16 V.S.A. §166(b)(8) and Rule 2226.11. To demonstrate evidence of financial capacity, the schools must provide one of the following: (1) an audit letter by a certified accounting firm from the present or prior year describing financial capacity; (2) a notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body; (3) an audit from the present or prior fiscal year performed by a certified accounting firm; or (4) a statement of financial capacity of a private, state, or regional agency recognized by the state board for accrediting purposes concerning the school's financial capacity. Rule 2225.9. The interpretation of this rule was clarified by the State Board on May 19, 2015. If a school has been accredited by the New England Association of Schools and Colleges then AOE will use this as evidence of financial capacity. If a school does not have this accreditation, then the school must submit any of the items listed in Rule 2225.9 and the AOE reviewer will ask for additional support if he or she does not think that the item provided adequately addresses financial capacity.
<ul style="list-style-type: none"> Requires bonds for school directors, treasurers, and assistant treasurers. 24 V.S.A. §832. 	

Personnel

Regarding school personnel, there are significant statutory and rule differences related to leadership, employment conditions, and teacher qualifications.

- Leadership.* Vermont statutes establish requirements for the duties, appointment, and dismissal of public school superintendents and principals.²⁹ There are no such requirements pertaining to approved independent schools.
- Employment conditions.* Examples of employment conditions that public schools, but not approved independent schools, are required to meet are those pertaining to: (1) employment contracts for teachers,³⁰

²⁹ [16 V.S.A. Chapter 5. Subchapters 2, 3.](#)

³⁰ [16 V.S.A. §1751.](#)

superintendents,³¹ and principals³² and (2) paid sick leave.³³ Regarding the number of teachers in a school, public schools must adhere to maximum average class size requirements³⁴ whereas the criteria for approved independent schools is that they “employ a sufficient number of professional staff for the population served.”³⁵ Lastly, in most cases, Vermont statute limits membership in the State Teachers’ Retirement System to teachers³⁶ employed by public schools.³⁷ However, there is a provision that allows the retirement system’s board of trustees to designate independent schools who are supported wholly or in part by the State to be employers of members of the system.³⁸ According to the Treasurer’s Office, the board of trustees has designated five independent schools under this provision.³⁹

- *Teacher Qualifications.* As shown in Table 3, the differences in the requirements related to teacher qualifications for general education between public and approved independent schools relate to specificity.

³¹ [16 V.S.A. §241.](#)

³² [16 V.S.A. §243.](#)

³³ [16 V.S.A. §1755.](#)

³⁴ [Rule 2121.2.](#) According to this rule, classes in grades K-3, when taken together, shall average less than 20 students per teacher and for grades 4-12, less than 25 students per teacher.

³⁵ [Rule 2226.7.](#)

³⁶ The definition of teacher in [16 V.S.A. §1931\(20\)](#) includes any licensed teacher, principal, supervisor, superintendent, or any professional licensed by the Vermont Standards Board for Professional Educators.

³⁷ [16 V.S.A. Chapter 55.](#)

³⁸ [16 V.S.A. §1935.](#)

³⁹ These schools are St. Johnsbury Academy, Lyndon Institute, Thetford Academy, Burr and Burton Academy, and the Vermont Achievement Center.

Table 3: Comparison of Selected Public and Approved Independent School Requirements Related to Teacher Qualifications for General Education

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> • Except for a substitute teacher, teachers and administrators employed in a public school must have a license and be appropriately endorsed for their assignment (this is the grade level and field in which the holder is authorized to practice, such as art, computer science, English, mathematics). 16 V.S.A. §1692 and Rule 2121.2 and 5220.1. • Establishes who needs to be licensed and the academic, examination, and other requirements for obtaining a license and specific endorsements. Rule Series 5000. • Requires license applicants to provide AOE with evidence that the applicant either has completed all requirements of an approved educator preparation program or has otherwise acquired the knowledge and skills required for a license through coursework and experiences apart from an approved educator preparation program. Provides for license reciprocity, temporary licenses, and Junior Reserve Officer Training Corps certification. 16 V.S.A. §1696. • Provides a process for revoking a license for unprofessional conduct or incompetence. 16 V.S.A. §1698 to §1707. 	<ul style="list-style-type: none"> • A criterion for the State Board to approve an independent school is that it employs a professional staff qualified by training and experience in the areas in which they are assigned. Teachers must have a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience. Rule 2226.5.
<ul style="list-style-type: none"> • The Board of each Supervisory Union shall provide or arrange for professional development programs for teachers, administrators, and staff. 16 V.S.A. §261a(a)(5) and Rule 2121.3. 	<ul style="list-style-type: none"> • A criterion for the State Board to approve an independent school is that the school has an adequate program for continuing professional staff development. Rule 2226.6.

Curriculum/Instruction

While both public and approved independent schools are required to meet a minimum course of study (see Sidebar at the right),⁴⁰ there are other curriculum/instruction requirements that only public schools must meet (see Table 4).

MINIMUM COURSE OF STUDY

- Basic communication skills, including reading, writing, and the use of numbers.
- Citizenship, history, and government in Vermont and the United States.
- Physical education and comprehensive health education.
- English, American, and other literature.
- Natural sciences.
- Fine arts.

⁴⁰ [16 V.S.A. §906](#).

Table 4: Comparison of Selected Public and Approved Independent School Requirements Related to Curriculum/Instruction

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> Requires minimum course of study. 16 V.S.A. §906. Each school must meet education quality standards adopted by rule by the State Board.^a Among the requirements are that schools develop and annually update a continuous improvement plan to improve the performance of all students enrolled in the district. Schools shall assess and report student performance under the plan to the community. 16 V.S.A. §165(a). Each supervisory union/district shall establish a curriculum that meets the requirements of the State Board’s education quality standards rule pertaining to curriculum/instruction and assist each school in the supervisory union/district in following the curriculum. 16 V.S.A. §261a(a). Establishes Education Quality Standards, which includes a section on curriculum and instruction. For example, schools must provide students the opportunity to experience learning through flexible and multiple pathways, including career and technical education, virtual learning, work-based learning, service learning, dual enrollment, and early college. Other examples are that schools are to (1) ensure that students in grades 7 – 12 have annually updated personalized learning plans; (2) enable students to demonstrate proficiency in various content, such as literacy and scientific inquiry; and (3) have academic and behavioral supports in place to assist all students in working towards attainment of the standards. Rule Series 2000.^b 	<ul style="list-style-type: none"> Requires minimum course of study. 16 V.S.A. §906 and §166(b). A criterion for the State Board to approve an independent school is that the school’s course of study is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate. Rule 2226.2. A criterion for the State Board to approve an independent school is that the school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, which includes library services, administrative services, guidance and counseling services, and a system or records by which pupil progress may be assessed. Rule 2226.3. A criterion for the State Board to approve an independent school is that the school has classroom, laboratory, library and other facilities necessary to operate its program. Rule 2226.4.

^a According to [16 V.S.A. §165\(f\)](#), an independent school may be designated as “meeting education quality standards” if it participates in the process required by [16 V.S.A. §165\(b\)](#). AOE reported that one approved independent school holds this designation based on its compliance with a predecessor standard. As of mid-December 2020, AOE had not evaluated this school (or any other independent school) against the education quality standards. AOE plans to invite the designated school to participate in an evaluation during the next school year. Should the school not agree to participate in such an evaluation, AOE plans to remove the designation.

^b There are additional requirements in [Rule Series 2000](#) that are included in other categories in this report.

In accordance with the education quality standard statute, AOE established education quality reviews to assess public school’s success in meeting these

standards.⁴¹ This review is composed of two components. The first is an annual snapshot of largely quantitative data on indicators that address public schools' academic proficiency, high quality staffing, personalization, safe and healthy schools, and investment priorities. The second component, integrated field reviews, subject supervisory unions and school districts to a one-day in-person examination of the implementation of the education quality standards by AOE staff and educators from neighboring school systems. The annual snapshot and results of the integrated field reviews of public schools are posted on the [AOE website](#).

If a public school fails to meet the education quality standards or does not make sufficient progress in improving student performance, AOE is required to recommend one or more specific actions to the State Board, which can include providing technical assistance or closing a school.⁴² After providing the opportunity for a hearing, the State Board is to order one or more actions authorized by State or Federal law that is to be the "least intrusive, consistent with the need to provide students attending the school or in the LEA [local education agency] with substantially equal educational opportunities."⁴³

Similarly, the State Board can revoke, suspend, or impose conditions on the approval of an approved independent school if it finds, after providing the opportunity for a hearing, that it has substantially failed to comply with the minimum course of study.⁴⁴

Health and Wellness

While there are some health and wellness requirements that pertain to both public and approved independent schools,⁴⁵ only public schools are required to provide health services and counseling and to engage a school nurse or associate school nurse.⁴⁶ In addition, the prohibition of tobacco products or tobacco substitutes on school grounds⁴⁷ and the requirement to conduct periodic hearing and vision screening⁴⁸ only applies to public schools.

Another significant difference is that independent schools are not required to operate a food program. While as allowed by statute, AOE can and does

⁴¹ [16 V.S.A. §165\(b\)](#) and [Rule Series 2500](#).

⁴² [16 V.S.A. §165\(b\)](#). This statute changed as of July 1, 2020 but the two actions listed as examples apply to the prior and current versions.

⁴³ [Rule 2575.1](#).

⁴⁴ [16 V.S.A. §166\(b\)\(5\)](#).

⁴⁵ For example, requirements pertaining to dealing with allergies ([16 V.S.A. §1387](#), [§1388](#)), concussions ([16 V.S.A. §1431](#)), and immunization ([18 V.S.A. §1121 – 1126](#)) pertain to both public and approved independent schools. Similarly, the requirements in [18 V.S.A., Chapter 24A](#) related to testing and remediating for lead in drinking water applies to both public and approved independent schools.

⁴⁶ [Rule 2121.5](#).

⁴⁷ [16 V.S.A. §140](#).

⁴⁸ [16 V.S.A. §1422](#).

award independent schools’ grants to establish and operate a food program,⁴⁹ such programs are required for public schools unless the school board votes to be exempted from the requirement.⁵⁰

Maintenance and Construction of Buildings

Almost all requirements in this category apply only to public schools. In particular, school boards are required to keep school buildings and grounds in good repair, suitably equipped, insured, and in safe and sanitary condition.⁵¹ In addition, school boards are required to follow State Board rules pertaining to construction bidding.⁵²

One criterion for the approval of independent schools is that the school satisfy all lawful requirements pertaining to its facilities.⁵³ A school seeking approval must certify that it has a current Certificate of Occupancy for any facility used for educational purposes.

Categories with Largely Similar Requirements

Students

This category has a number of areas of commonality between public and approved independent schools although public schools are sometimes subject to more specific requirements (see Table 5).

Table 5: Comparison of Selected Public and Approved Independent School Requirements Related to Students

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> No student shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as a result of, or based upon, the student’s race, gender, color, creed, national origin, marital status, sexual orientation, gender identify or disability, or any other reason set forth in state or federal non-discrimination requirements. Rule 2113. 	<ul style="list-style-type: none"> No student shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as a result of, or based upon, the student’s race, gender, color, creed, national origin, marital status, sexual orientation, gender identify or disability, or any other reason set forth in state or federal non-discrimination requirements. Rule 2113.

⁴⁹ [16 V.S.A. Chapter 27, Subchapter 2](#). Food programs make available a school lunch as provided by the National School Lunch Act as amended and a school breakfast as provided in the National Child Nutrition Act as amended.

⁵⁰ For a listing of the public and independent schools that offer food programs, see AOE’s [Child Nutrition Programs Annual Statistical Report Percent of Students Approved for Free and Reduced-Price School Meals, School Year 2019-2020](#).

⁵¹ [16 V.S.A. §563](#).

⁵² Rule Series [6300](#) and [6400](#).

⁵³ [Rule 2226.8](#).

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> Schools shall develop and maintain a tiered system of academic and behavioral supports meeting specified requirements to provide all students with the opportunity to succeed or be challenged in the general education environment. Includes requirements for educational support teams. 16 V.S.A. §2902. 	
<ul style="list-style-type: none"> School boards shall provide all textbooks, learning materials, equipment, and supplies at the district's expense. 16 V.S.A. §563(14) and §3743. 	
<ul style="list-style-type: none"> Schools shall assess student performance in accordance with State Board standards. 16 V.S.A. §165(a)(1). 	<ul style="list-style-type: none"> Schools that accept public tuition shall assess student performance in accordance with State Board standards. 16 V.S.A. §166(g)
<ul style="list-style-type: none"> School boards shall develop, adopt, and enforce harassment, hazing, and bullying prevention policies. 16 V.S.A., Chapter 9, Subchapter 5. 	<ul style="list-style-type: none"> Schools shall adopt harassment, hazing, and bullying prevention policies and procedures in accordance with 16 V.S.A., Chapter 9, Subchapter 5. 16 V.S.A. §166(e).
<ul style="list-style-type: none"> Each school shall adopt and implement a comprehensive plan for responding to student misbehavior which shall include, for example, a description of behaviors on and off school grounds that constitute misconduct and standard due process procedures for suspension and expulsion of students. 16 V.S.A. §1161a. Prohibition and permissible uses of physical restraint and seclusion. Requires reporting and documentation of the same. Rule Series 4500. Details due process procedures for suspensions such as a hearing, notice of the charges, and a decision in writing to the parent/guardian. Rules 4311 to 4313. Requires policies on student alcohol and drug abuse and possession of a firearm at school. 16 V.S.A. §1165 and §1166 and Rule 4212. Sets suspension and expulsion criteria for certain misconduct. 16 V.S.A. §1162. 	<ul style="list-style-type: none"> Each school shall adopt and implement a comprehensive plan for responding to student misbehavior which shall include, for example, a description of behaviors on and off school grounds that constitute misconduct and standard due process procedures for suspension and expulsion of students. 16 V.S.A. §1161a. Prohibition and permissible uses of physical restraint and seclusion. Requires reporting and documentation of the same. Rule Series 4500.
<ul style="list-style-type: none"> Allows a pregnant or parenting student to enroll in a school in which any other legal pupil in Vermont may enroll. 16 V.S.A. §1073. 	<ul style="list-style-type: none"> Allows a pregnant or parenting student to enroll in a school in which any other legal pupil in Vermont may enroll. 16 V.S.A. §1073.
<ul style="list-style-type: none"> Requires truancy policies. 16 V.S.A. §261a(a)(12). Requires appointment of truancy officers and provides for their duties. 16 V.S.A. §1125, §1127, and §1128. Requires notification of a student's failure to attend school to the truancy officer. 16 V.S.A. §1126. 	

Public Schools	Approved Independent Schools
<ul style="list-style-type: none"> Each school shall have at least 175 student attendance days in each school year. 16 V.S.A. §1071(a)(1) and Rule 2311. Minimum length of school day set by grade level. Rule 2312. 	<ul style="list-style-type: none"> A criterion for the State Board to approve an independent school is that it maintains an operating schedule that includes a total number of instructional hours each year that is no less than that required of public schools serving the same grades. Rule 2226.10.
<ul style="list-style-type: none"> Student enrollment and daily attendance data to be maintained and transmitted along with other required information to AOE. 16 V.S.A., Chapter 29 and Rule 2113. 	<ul style="list-style-type: none"> A criterion for the State Board to approve an independent school is that it maintains records of attendance and transmits student enrollment and termination data to AOE. 16 V.S.A. §166(b)(4) and Rule 2226.9.

Safety and Security

There are many requirements in this category that pertain to both public schools and approved independent schools. For example, the following requirements pertain to both types of schools:

- Checks of criminal records and the child protection registry for new employees and contractors and their employees who may have unsupervised contact with school children,⁵⁴
- Employees to report suspected child abuse and neglect,⁵⁵
- Fire and emergency preparedness drills, and⁵⁶
- School bus equipment, operation, inspection, and operator standards.⁵⁷

There were a few requirements that were applicable to public, but not approved independent, schools. For example, superintendents and school boards must develop a comprehensive emergency plan for each school that is updated and tested annually.⁵⁸

⁵⁴ [16 V.S.A. §255](#).

⁵⁵ [33 V.S.A. §4913](#).

⁵⁶ [16 V.S.A. §1481](#).

⁵⁷ [23 V.S.A. §1281 to §1287](#).

⁵⁸ [Rule 4102](#).

Career and Technical Education (CTE)

The requirements for CTE in statute⁵⁹ and rule⁶⁰ largely apply to both applicable public and approved independent schools. This is because [16 V.S.A. §1546](#) requires that requirements pertaining to accountability and responsibilities apply to comprehensive high schools, which is defined as a public or independent school other than a career technical center that provides CTE. According to AOE officials, there are two approved independent schools that meet the definition of a comprehensive high school—St. Johnsbury Academy and Lyndon Institute. There are two public comprehensive high schools and 15 public CTE centers.

Conclusions

Both public and approved independent schools are subject to many statutes and rules but these requirements can differ significantly. Generally, the differences subject public schools to more requirements than approved independent schools, particularly in the categories of governance and public participation and transparency. Other examples in which public school requirements exceed those of approved independent schools are budgeting and financial management, teacher qualifications, and curriculum/instruction.

Management's Comments

On December 17, 2020, the Secretary of the Agency of Education provided comments on a draft of this report (reprinted in Appendix III).

⁵⁹ [16 V.S.A. Chapter 37](#).

⁶⁰ [Rule Series 2370](#).

Appendix I

Scope and Methodology

To address the objective, we hired a law firm to identify (1) Title 16 provisions and State Board rules applicable to K-12 public schools, but not to approved independent schools, (2) Title 16 provisions and State Board rules applicable to approved independent schools, but not public schools, (3) Title 16 provisions and State Board rules applicable to both K-12 public schools and approved independent schools, and (4) non-Title 16 statutes applicable to K-12 public schools but not approved independent schools. The law firm summarized each statute and rule requirement by category: governance, public participation and transparency, budgeting and financial management, personnel, students, instruction/curriculum, safety and security, maintenance and construction of buildings, health and wellness, and career and technical education. The firm also identified other requirements that did not fit into these categories.

We reviewed the results of this analysis and obtained clarification from AOE's programmatic staff in areas such as career and technical education, education quality standards, and food programs. We also provided a copy of the completed analysis to AOE's general counsel for review and concurrence.

Our scope did not include special education because, effective July 1, 2023, the statute pertaining to special education at approved independent schools will be changed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II Abbreviations

AOE	Agency of Education
CTE	Career and technical education
V.S.A.	Vermont Statutes Annotated

Appendix III Management's Comments from the Agency of Education

The following is a reprint of management's response to a draft of this report.



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Agency of Education

December 17, 2020

The Honorable Douglas Hoffer
Vermont State Auditor
132 State Street
Montpelier, Vermont 05633

RE: Agency of Education Response to Audit Report, *Vermont Schools: Approved Independent [Private] Schools Are Not Subject to Most of the Statute and Rules That Govern Public Schools*

Dear Auditor Hoffer,

Thank you for the opportunity to respond to the results of your office's audit report entitled "Vermont Schools: Approved Independent [Private] Schools Are Not Subject to Most of the Statute and Rules That Govern Public Schools."

The report contains many interesting observations and will serve as a useful resource for members of the public who may not be aware of Vermont's framework of public and independent schools.

The statutes and corresponding rules governing approved independent schools have developed over the last fifty years alongside major reforms of the broader education system such as the *Brigham* decision and resulting changes to education finance, flexible pathways initiatives and personalization of learning, district governance consolidation in Acts 153, 156 and 46, as well as recent changes to special education and rules for independent schools that will take effect in 2023.

This evolution in education policy has taken place in the absence of a single, coherent design for the system as a whole. The resulting differences highlighted in this report should not come as a surprise. They should, along with all education statutes and regulations, be examined to determine whether the current framework makes sense, and whether it enables the state to provide all students equal access to a high-quality education.

Sincerely,

A handwritten signature in blue ink that reads "Dan French".

Daniel M. French, Ed.D
Secretary
Vermont Agency of Education