

The Role of Rulemaking

Presentation to the Vermont House Committee on Education

January 12, 2023

State Board Membership

- **Jennifer Deck Samuelson, Chair** (2020 - 2/28/2026)
 - Winhall
- **Tammy Kolbe, Vice Chair** (2021 - 2/28/2027)
 - Warren
- **Patrick Brown** (2021 - 2/28/2023)
 - Burlington
- **Kim Gleason** (2019 - 2/28/2025)
 - Grand Isle
- **Lyle Jepson** (2021 - 2/28/2027)
 - Rutland
- **Tom Lovett** (2021 - 2/28/2027)
 - Waterford
- **Gabrielle Lucci** (2021 - 6/30/2023)
 - Poultney
- **Jenna O'Farrell** (2019 - 2/28/2025)
 - St. Johnsbury
- **Amera Severtson** (2022 - 6/30/2023)
 - Barre
- **Richard Werner** (2022 - 2/28/2024)
 - East Dover
- **Dan French, Secretary of Education**

SBE Activities

- Public Forum
 - All meetings are warned and open to the public
 - Meetings highlight successes and challenges at various schools
 - Meetings include regular DEI Presentations
- Independent School Approvals
- Quasi-Judicial Role
 - Rate appeals
 - Tuition appeals
- Withdrawals from SUs/SDs
- Rulemaking
 - 2022: Rule 2200 Series and Rule 7000 Series
 - 2023: Rule 2000 Series

Authority to Engage in Rulemaking

The State Board shall “adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the powers and duties of the Board as directed by the General Assembly, within the limitations of legislative intent.” 16 V.S.A. §164(7).

Rulemaking Overview

“The Administrative Procedure Act (Chapter 25 of Title 3 of Vermont Statutes Annotated, also known as the APA) governs the adoption of rules by executive branch agencies, including the State Board of Education. The State Board, by virtue of 16 V.S.A. §164(7) (and other statutes on particular subjects, for example special education – 16 V.S.A. §2959(a)), has the authority to make legally binding rules in order to assist in the interpretation, implementation, and enforcement of the education statutes.”

<https://education.vermont.gov/state-board-councils/state-board/rulemaking>

Prefiling Process

- The General Assembly may convene a Working Group to propose suggested changes to a Rule Series.
- SBE forms a subcommittee to review the Rule Series that is to be opened and draft proposed updates.
- SBE Subcommittee meets regularly at warned meetings to discuss and develop, with stakeholder input, proposed changes to the Rule Series that are within the scope of its authority and in keeping with legislative intent.
- The SBE Subcommittee may hold a public comment hearing to support and encourage public input prior to filing.
- The SBE Subcommittee presents its proposed changes to the Rule Series to the full Board at a warned meeting for its consideration and approval.

Steps in the Formal APA Rulemaking Process

- SBE initiates formal rulemaking of the proposed changes to the Rule Series at a warned meeting.
- SBE pre-files the proposed changes with the Interagency Committee on Administrative Rules (ICAR).
- SBE files the proposed changes, including information about the need for and impact of the proposed changes, with the Secretary of State.
- Proposed changes to the Rule Series are published (advertising in the media).
- The public provides comments at public hearings, if any, and through submission of written comments.
- The Secretary reviews the public comments and offers any recommendations for revision of the proposed changes to the Rule Series.
- SBE Subcommittee reviews each public comment and the Secretary's recommendation at warned meetings and either accepts or denies each one (with the reasoning of any denial stated therein).

Steps in the Formal APA Rulemaking Process (cont'd)

- SBE reviews the Subcommittee's final proposed draft, including its proposed resolution of all public comments and the Secretary's recommendations, at a warned meeting and votes to proceed with the final proposed changes to the Rule Series.
- Within 8 months from the date of the initial filing with the Secretary of State, SBE files the final proposed Rule Series with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).
- LCAR reviews the final proposed Rule Series at a public meeting.
- SBE files the adopted Rule Series with the Secretary of State.
- Rule Series becomes effective after 15 days from filing unless a later time is specified in the Rule Series itself.
- The new or amended Rules are added to the Agency's online rules and distributed to holders of hard copies of "State Board Manual of Rules and Practices."

Case Study: Updates to Rule Series 2200

- The General Assembly passed Act 173 of 2018 and created an Advisory Group (AG) to, among other things, advise the SBE on the development of proposed rules to implement the Act prior to the submission of the proposed rules to ICAR.
- The Act also directed the AOE to recommend to the SBE proposed rules that were necessary to implement the Act.
- The Act further provided the SBE with the direction necessary for it to develop amendments to its rules (particularly its Rule 2200 Series) governing the approval of independent schools.

Case Study (cont'd)

- AG convened its first meeting on September 14, 2019 and met several times a year to draft proposed changes to the Rule Series.
- The AG approved its draft rules on December 7, 2020.
- The SBE 2200 Subcommittee convened its first meeting on January 8, 2021 and met 10 times during the prefiling process to identify rules that could be updated independent of Act 173.
 - Added AISNE (Association of Independent Schools in New England) as a recognized accrediting agency.
 - Added the requirement that any independent school that boards students must be accredited by a state or regional agency recognized by the Board or licensed by DCF as a residential child care facility.
 - Updated the procedure for enrolling publicly funded students in approved independent schools.

Case Study (cont'd)

- SBE accepted the proposed prefilings revisions and voted to initiate formal APA rulemaking process at its May 19, 2021 meeting.
- Paperwork was filed with the Secretary of State prior to June 30, 2021 deadline.
- ICAR Hearing held on July 12, 2021.
- SBE held four public comment hearings and received written comment, as well.
- 2200 Subcommittee met 14 times after initiating the formal rulemaking process to process public comment and make further revisions to the Rule Series.
- SBE approved the final proposed version of the Rule Series at a Special Meeting on March 9, 2022.
- Rule Series revisions unanimously approved at LCAR meeting on April 21, 2022.
- Paperwork filed with Secretary of State on April 25, 2022.

Case Study (cont'd)

- **Non-Act 173 related rules became effective on May 10, 2022** (15 days from filing with the Secretary of State):
 - Rule 2223 (Procedure)
 - 2223.8 (Revocation or Suspension of Approval)
 - 2223.9 (Complaints; Investigations)
 - Rule 2224 (Reciprocity)
 - Added AISNE
 - Rule 2226 (Application)
 - Statement of nondiscrimination that is consistent with the Vermont Public Accommodations Act and the Vermont Fair Employment Practices Act
 - Rule 2227 (Approval)
 - Added the requirement that any independent school that boards students must be accredited by a state or regional agency recognized by the Board or licensed by DCF as a residential child care facility
- **Act 173 related rules will take effect on July 1, 2023.**

Issues Confronting SBE in Area of Rulemaking

- Many rules are outdated.
 - Ex: Rule Series 1100 was last revised in 1992 and lays out the authority of the “DOE” and the “Commissioner”.
- Although the rules “belong” to the SBE, the substance of many of them is more properly addressed to the AOE.
 - Ex: Rule Series 2300 (Length of School Day and Year; Vermont GED; Driver Education)
 - Ex: Rule Series 6000 (School Building and Sites)
- SBE hopes that the General Assembly will finalize the division of roles and responsibilities between the SBE and AOE in this legislative session.
- SBE would benefit from dedicated legal assistance to advise it in its work.