

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Independent School Program Approval

_____/s/ Oliver Olsen_____, on 3/15/2022
(signature) (date)

Printed Name and Title:
Oliver Olsen
Chair
State Board of Education

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

Final Proposed Coversheet

1. TITLE OF RULE FILING:

Independent School Program Approval

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21 P-23

3. ADOPTING AGENCY:

State Board of Education

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Emily Simmons

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier,
VT 05602-2501

Telephone: 802 828 - 1518 Fax: 802 828 - 6430

E-Mail: emily.simmons@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

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

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Judy Cutler

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier,
VT 05602-2501

Telephone: 801 828 - 0079 Fax: 802 828 - 6430

E-Mail: judy.cutler@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

16 V.S.A. § 166(b)(8)(C)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Statute provides that financial information provided by an approved independent school in response to the State

Final Proposed Coversheet

Board's requests during a review of financial capacity are exempt from public disclosure if the information was not previously made public.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

16 V.S.A. § 164(14) and Section 22 of Act 173 of 2018 (session law), as amended by Section 8 of Act 112 of 2020 (session law).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

16 V.S.A. § 164(7): "The State Board shall . . . adopt rules pursuant to 3 V.S.A. chapter 25 as necessary or appropriate for the execution of its powers and duties and of the powers and duties of all persons under its supervision and control. 16 V.S.A. § 164(14): "Adopt rule for approval of independent schools."

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

Act 173 of 2018 requires the State Board of Education to adopt rules implementing certain changes to the requirements an independent school must satisfy in order to receive public tuition. These changes include enrollment of students who require special education services and provision of special education to publicly funded students. In current law, students who receive special education services may only choose an

Final Proposed Coversheet

independent school that has sought and received approval for the student's specific disability category. Act 173 and these rules implement a system that allows students who receive special education to enroll in any independent school that has been approved for public funding, if the Supervisory Union approves the placement. These rules create procedures for school districts and approved independent schools to ensure students receive special education services in conformity with federal and state law.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

These rules are directly impacted by sections 20, 21 and 22 of Act 173 of 2018. Revisions are necessary to implement the Act as directed by the General Assembly.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

This rulemaking is being done at the specific direction of the General Assembly.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Supervisory Unions (SUs)/School Districts/Supervisory Districts (SDs); State Board of Education; independent schools; school staff; parents; students; advocacy groups; and the Agency of Education (AOE).

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This rule effectuates the changes to the independent school approval standards directed by Act 173, which may have significant impacts on SUs/School Districts/SDs and independent schools. One example of a likely financial impact, detailed in the economic impact analysis, is a proposed requirement that schools with a boarding / residential program be accredited by an accreditation agency recognized by the SBE. Additionally, independent schools and SUs/School Districts/SDs may see increased costs due to providing special education services to all eligible children who attend approved independent schools through public tuition payment.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

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(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 8/26/2021

Time: 12:00 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code: 05620-2501

Date: 9/15/2021

Time: 04:00 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code: 05620-2501

Date: 10/20/2021

Time: 04:30 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code:

Date: 10/26/2021

Time: 07:00 PM

Final Proposed Coversheet

Street Address: The hearing will be held virtually. A
staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code: 05620-2501

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

11/5/2021

**KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE
SEARCHABILITY OF THE RULE NOTICE ONLINE).**

Act 173

Independent Schools

IDEA

Special education

Tuition

MEMORANDUM

TO: Legislative Committee on Administrative Rules
FROM: State Board of Education
SUBJECT: Summary of Changes to Rule Series 2200 Following Public Comment
DATE: March 15, 2022

Proposed Rule 2200, Independent School Program Approval

Act 173 of 2018 required the State Board of Education to adopt rules implementing certain changes to the requirements an independent school must satisfy in order to receive public tuition. These changes include enrollment of students who require special education services and provision of special education to publicly funded students. In current law, students who receive special education services may only choose an independent school that has sought and received approval for the student's specific disability category. Act 173 and these rules implement a system that allows students who receive special education to enroll in any independent school that has been approved for public funding, if the Supervisory Union approves the placement.

The State Board held four public hearings on the draft rule. All public comments, oral and written, are detailed in the attached table, with the State Board's response to each. This memo summarizes the most substantial changes made to the draft rule as a result.

In response to public comment, the State Board has added sections to the rule that 1) explicitly require compliance with nondiscrimination laws for approval, 2) incorporate suggestions from the State Auditor's most recent review of approved independent school oversight, 3) require an independent school operating a boarding program to be accredited or licensed in order to receive approval, and 4) respond to anticipated legislation requiring nondiscriminatory school branding. This last provision will only have legal effect if a new requirement is enacted by the General Assembly.

Several comments centered around admissions practices required by Rule 2229. The State Board sought the opinion of the Act 173 Advisory Group in considering further amendments. The Advisory Group recommended a re-write of the rule to address the concerns raised in public comment and to clarify the original intent of the rule. In the final draft, the State Board has revised Rule 2229, adopting the Advisory Group recommendations in nearly all respects. The new draft of the rule prohibits special requirements or considerations for enrollment that disadvantage students based on protected class status, an actual or suspected disability or socioeconomic status. It requires a school to maintain and publish an enrollment policy, listing any enrollment requirements and stating how the school will make enrollment decisions when the number of applications exceeds capacity. Finally, the rule expressly requires non-discriminatory enrollment in Rule 2229.1(a)(4).

The State Board received comments requesting changes to Rule 2232, rate setting for therapeutic independent schools, and the State Board asked the Advisory Group to give its opinion of whether the rule should be amended in response. The Advisory Group did not recommend any changes to Rule 2232 in response to public comment, and the State Board agreed. The rule was written with substantial stakeholder engagement prior to pre-filing. This process took 3-4 months and resulted in a compromise draft that all stakeholders and the Act 173 Advisory Group endorsed. None of the comments received persuaded either the Advisory Group or the State Board that the suggested changes would improve the stakeholder-negotiated language beyond the hard-won compromise that had been achieved, and thus, the language of this rule remains unchanged from that filed with ICAR.

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

Independent School Program Approval

2. **ADOPTING AGENCY:**

State Board of Education

3. **TYPE OF FILING** (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. **LAST ADOPTED** (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Independent School Program Approval; March 15, 2017;
Secretary of State Rule Log #17-006.



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: July 12, 2021, Physical Location: 109 State Street, 5th Floor Conference Room, Montpelier VT; Virtual Meeting: Microsoft Teams
Members Present: Chair Kristin Clouser, Dirk Anderson, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Diane Sherman
Members Absent: Ashley Berliner, Clare O'Shaughnessy
Minutes By: Melissa Mazza-Paquette and Diane Bothfeld

- 2:12 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the June 14, 2021 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Note: The following emergency rules were supported by ICAR Chair Clouser:
 1. 'Access to Health Care Services Related to COVID-19' by the Department of Financial Regulation on 6/30/21.
 2. 'Interim Rules for Clinical Pharmacy' by the Secretary of State, Office of Professional Regulation on 7/7/21.
 3. PUC Emergency Rule 2.600 COVID-19 Emergency Procedures' by the Public Utility Commission on 7/9/21.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Hemlock Woolly Adelgid Quarantine, Agency of Agriculture, Food and Markets, page 2
 2. Vermont Joint Quarantine No. 1 (Scleroderris Canker), Agency of Agriculture, Food and Markets, page 3
 3. Hospital Licensing Rule, Agency of Human Services, page 4
 4. Administrative Rules for Veterinarians, Secretary of State, Office of Professional Regulation, page 5
 5. Independent School Program Approval, State Board of Education, page 6
 6. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 7
- Next scheduled meetings:
 - Wednesday, July 14, 2021 - Review of ICAR Forms with the Office of the Secretary of State
 - Monday, August 9, 2021 at 2:00 p.m. – Monthly ICAR meeting
- 3:49 p.m. meeting adjourned.

Proposed Rule: Independent School Program Approval, State Board of Education
Presented By: Emily Simmons, Jennifer Samuelson

Motion made to accept the rule by Diane Sherman, seconded by Jen Mojo, and passed unanimously expect for Diane Bothfeld who had to leave the meeting prior to voting on this proposed rule, with the following recommendations:

1. Proposed Rule Coversheet, #12 and Economic Impact Analysis: Include further explanation and agreement with the general assembly of the economic impact and reasoning.
2. Proposed Rule Coversheet, #8: Provide explanation of what is being changing from.
3. Economic Impact, #4: Include a period at the end of the paragraph.
4. Public Input, #3: Include plans to advertise hearings and detail communication methods.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Independent School Program Approval

2. ADOPTING AGENCY:

State Board of Education

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Supervisory Unions (SUs)/School Districts/Supervisory Districts (SDs); State Board of Education; independent schools; school staff; parents; students; advocacy groups; and the Agency of Education (AOE).

4. IMPACT ON SCHOOLS:

Economic Impact Analysis

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The enabling legislation will have impacts on public education. These impacts are not known with specificity. The impacts will depend in large part upon how independent schools that are currently approved to receive public tuition respond to the new mandates related to special education. Some independent schools may choose to forego public tuition rather than comply with Act 173 requirements. Independent schools that receive public tuition will charge the excess costs of providing special education to each student's district of residence. This could cause school district budgets, and thus tax rates, to increase. However, these rules are tightly aligned to the Act itself.

In one instance, the proposed rule will have a financial impact on certain independent schools. The proposed rule amendment under Section 2227 (updated numbering) includes a requirement that schools with a boarding / residential program be accredited by an accreditation agency recognized by the SBE. This will have a financial impact on any school operating a boarding program that does not already have third-party accreditation, and has the potential to prevent schools from becoming approved if they are unable to obtain accreditation. This was not mandated by Act 173; it is a change proposed by the SBE independent of any mandate dictated by Act 173.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

As this rulemaking has been undertaken at the direction of the General Assembly, no alternatives were considered.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

Economic Impact Analysis

None.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

No cost/burden of compliance for small businesses is anticipated.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

As no alternatives were considered, no comparisons were made.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

Representatives of organizations representing impacted entities were integrally involved in the development of the proposed rules and the assessment of economic impact has been part of the deliberative process.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Independent School Program Approval

2. ADOPTING AGENCY:

State Board of Education

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
None.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
None.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
None.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
None.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
None.

Environmental Impact Analysis

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

None.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Independent School Program Approval

2. ADOPTING AGENCY:

State Board of Education

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The SBE and AOE will continue to involve stakeholders to seek input on the rule, post the rule on the AOE website with opportunity for public comment, and hold four (4) public hearings. The public hearings will be advertised through various communication methods including through the AOE's weekly field memo, related professional associations, postings on the AOE website, and announcements at monthly SBE meetings.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The SBE was advised by the AOE and the Census-Based Funding Advisory Group, which is a stakeholder group established by Act 173. Prior to proposing draft rules to the SBE, the AOE worked with the Census-Based Funding Advisory Group and two working groups comprised of representatives from the Census-Based Funding Advisory Group. These working groups met twice per month, and more frequently in some cases from August 2020 until March 2021. During this time, the AOE also engaged other stakeholders via more informal conversations in seeking feedback on proposed rules.

Public Input

The SBE reviewed the proposed rules at its monthly meetings in February - May, 2021. The SBE provided opportunity for public comment and solicited specific comment from the Census-Based Funding Advisory Group and the Vermont Independent Schools Association at each of these meetings. Finally, the SBE's Rule 2200 Update Committee met several times throughout the past year and actively sought input from stakeholders on proposed rule changes, particularly the one change that was not mandated by Act 173 (requirement that board school programs be accredited). The SBE has worked to develop a proposed rule that has the consensus of the education community prior to pre-filing.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

State Board of Education

Agency of Education

Census-Based Funding Advisory Group

Council of Independent Schools

Susan Marks - Special education consultant

Vermont Association of School Business Officials

Vermont Council of Special Education Administrators

Vermont Department of Mental Health

Vermont Independent Schools Association

Vermont Legal Aid

Vermont National Education Association

Vermont Principals' Association

Vermont School Boards Association

Vermont Superintendents Association

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
1	William Mathis	Former SBE Member	yes	The AOE does not have enough capacity to monitor independent schools (Rule 2223).	SBE does not have authority to add staff to AOE. SBE does not have authority to give oversight to a different agency.	Reject
2	William Mathis	Former SBE Member	yes	The minimum course of study is weak (16 V.S.A. 906).	SBE rules comply with 16 V.S.A. 906 as proposed. SBE does not have authority to diverge from statute.	Reject
3	William Mathis	Former SBE Member	yes	The enrollment rule is ambiguous, of questionable legality and is wrong (Rule 2223.3 and 2229).	With regard to the language of 2223.3, the SBE is constrained by statute with regard to approval of independent schools that are not additionally approved to receive public tuition. The State Board will amend 2223.3 only to remove the phrase "choosing not to enroll students requiring special education" to change the tone to better reflect intent. Finally, with the input and support of members of the Census Based Funding Advisory Group (CBFAG) the SBE will amend Rule 2229.	Accept in part
4	William Mathis	Former SBE Member	yes	The CIS should not have a role in the revocation/suspension of approval process (Rule 2222.32).	SBE is constrained by 16 V.S.A. 166(d).	Reject
5	William Mathis	Former SBE Member	yes	The trigger related to review of financial capacity, "lacks financial capacity" is vague.	The SBE proposed rule is relying on the text of statute, 16 V.S.A. 166, which uses the term "lacks financial capacity."	Reject
6	William Mathis	Former SBE Member	yes	The SBE should wait until the US Supreme Court decides the Maine tuition case (2225).	The outcome of the Supreme Court case may or may not directly impact Vermont, and it is this time any impact is speculative.	Reject
7	William Mathis	Former SBE Member	yes	The rules on providing special education "assurances" is too weak (2229).	The SBE agrees with the CBFAG that the proposed language for 2229 (Assurances) is appropriate and will not be amended. The SBE notes that the language as proposed is taken directly from Act 173.	Reject
8	William Mathis	Former SBE Member	yes	The rule on out of district placement seems redundant and may conflict with federal and state law.	The proposal does not contain a rule on out of district placements; this process is governed by IDEA and Rule 2360. Rule 2229, as amended, is consistent with federal and state law, and the SBE accepts the recommendation of the CBFAG that the language should not be amended further.	Accept in part
9	William Mathis	Former SBE Member	yes	The rules should respond to the findings of the Auditor's report of July 2021.	The proposed rule responds to relevant recommendations of the Auditor's report dated December 18, 2020.	Reject
10	William Mathis	Former SBE Member	yes			Reject

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	Name Lisa Purcell	Town or Organization Chittenden	Written Testimony? no	Summary of Requested Rule Change Has two questions as someone living in a school choice town. Does not see any mention of independent schools needed to abide by equal employment opportunity commission for nondiscrimination.	Proposed SBE Response The SBE will amend the proposed rule to respond to this comment. See proposed new language for Rule 2226 and Rule 2227.	Reject or Accept Commenter Request Accept
11	Lisa Purcell	Chittenden	no	The other piece is how is public being notified about these hearings as well as other issues under consideration by SBE. Also noted that today's website indicates that an SBE meeting was cancelled. This could have been confusing to individuals who would have attended today.	The SBE addressed this comment during the public hearing process.	Accept
12	Lisa Purcell	Chittenden	yes	Anti-discrimination language should be in a more prominent place than in Rule 2225.6 which describes requirements of physical facilities. It should have its own rule number and place within the process of approving schools.	The SBE will amend the proposed rule to respond to this comment. See proposed new language for Rule 2226 and 2227.	Accept
13	Emily Simmons	AOE	yes	Comments regarding compliance with PAA, the state auditor's 2021 report, and postsecondary accreditation.	The SBE will amend the proposed rule to respond to this comment, with language proposed in the AOE written comment. See Proposed new language for Rule 2226.	Accept
14	Donna Russo-Savage	AOE	yes	Comments that led to initiation of rulemaking on Series 7000, now in process.	The SBE has responded to this comment in separate rulemaking. Language will be added as proposed in the AOE written comment.	Accept
15	Megan Calla	Potential independent school founder	yes	Generally pleased with the direction that the rule changes have taken. Primary concern is the vague references to LEA's determination that a placement is "appropriate" (Rule 2229.4(b)). Suggests re-wording to help with consistency and readability.	With the input and support of the Census Based Funding Advisory Group (CBFAG) the SBE will amend Rule 2229.	Accept
16	Megan Calla	Potential independent school founder	yes	Section 2222 Definition of special education fees should read, "... funds paid by an LEA (school district or supervisory union) to an approved independent school..."	SBE will not accept the comment because it is not consistent with definitions of school district, supervisory union and LEA.	Reject
17						

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
1	Megan Calla	Potential independent school founder	yes	Section 2223.3 in the third sentence should read, "A school meeting approval requirements in SBE Rules 2226 (Application) and 2227 (Approval) but choosing..."	SBE will amend proposed rule to add parenthetical references to a rule where it will enhance readability.	Accept
18	Megan Calla	Potential independent school founder	yes	Section 2229.4 subsection (d) should use the word "conditioned" instead of the word "based."	With the input and support of members of the Census Based Funding Advisory Group (CBFAG) the SBE will amend Rule 2229.	Accept
19	Will Moore	Vermont Independent Schools Assn.	yes	"VISA does not support use of public funds in any school with discriminatory enrollment or hiring practices."	SBE noted the comment as consistent with its amendments to proposed rule 2226.	Accept
20	Alicia Hamrahan	Randolph	yes	Refers to definition of "approved independent school" and questions whether this means that every independent school can receive public funding.	SBE is constrained by 16 V.S.A. 166. Act 173 directs that an approved independent school intending to accept public tuition must enroll any student who requires special education, when/if deemed appropriate by IEP team. See 2223.3 for detail on which "approved" schools can and cannot receive public funds.	Reject
21	Alicia Hamrahan	Randolph	yes	Refers to definition of "approved independent school" and questions whether this means that a student eligible for special education can attend any independent school in Vermont. Questions how a student can receive their special education services.	The process laid out in Rule 2229, as amended, provides that a student eligible for special education can attend any approved independent school in Vermont and receive IEP services.	Reject
22	Alicia Hamrahan	Randolph	yes	Refers to definition of "therapeutic approved independent school. Submits that not all students who are on an IEP need a therapeutic school, asks why the rule would categorize all schools to be "therapeutic." Cites example of I.N.S.P.I.R.E. school for Autism. Submits this is not a therapeutic school in the mental health sense. Recommends that only CERT schools are considered to be therapeutic. Requests that the word "therapeutic" be removed.	The SBE accepts the recommendation of the Act 173 Census Based Funding Advisory Group that the term "therapeutic" is appropriate to describe this category of school.	Reject
23						

	B	C	D	E	G	M
1	<p>Name Alicia Hamrahan</p>	<p>Town or Organization Randolph</p>	<p>Written Testimony? yes</p>	<p>Summary of Requested Rule Change Refers to the definition of "therapeutic approved independent school." Questions whether this means that every independent school must be approved for all disabilities. Submits that language should be clear if a school will be approved for all disabilities or if the school can pick and choose.</p>	<p>Proposed SBE Response The SBE accepts the recommendation of the Act 173 Census Based Funding Advisory Group that the term "therapeutic" is appropriate to describe this category of school.</p>	<p>Reject or Accept Commenter Request Reject</p>
24	<p>Alicia Hamrahan</p>	<p>Randolph</p>	<p>yes</p>	<p>Refers to Section 2223, Procedure for approval, which requires a review team of two people. Submits that the team should include one person who has knowledge and expertise in special education if the school is applying to be approved for special education.</p>	<p>The rule as proposed allows AOE to carry out its duties using staff deemed appropriate by the Secretary. AOE was comfortable with the rule as written and SBE accepts its recommendation that no change is required.</p>	<p>Reject</p>
25	<p>Alicia Hamrahan</p>	<p>Randolph</p>		<p>Refers to Section 2223.2 Report. Points out that the section refers to a "recommendation" and a "report." Suggests that a detailed report should be written that includes a recommendation. States that this should accompany the SBE paperwork that is written up and provided, and should be a separate document.</p>	<p>The SBE will amend the rule to reflect that the review committee shall "write a report, including a written initial recommendation" to the Secretary. A copy of the report shall be provided to the School. The Secretary makes a final recommendation to the SBE after the 30 days.</p>	<p>Accept</p>
26	<p>Alicia Hamrahan</p>	<p>Randolph</p>	<p>yes</p>	<p>Refers to 2225.2 "tuition for out of state schools." Questions whether the host state needs to be approved by their agency of education for specific disabilities.</p>	<p>Current language is inconsistent with 16 V.S.A. 828. SBE will amend.</p>	<p>Accept</p>
27						

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
1	Alicia Hanrahan	Randolph	Yes	Refers to 2226.3 which requires a "statement of how it is designed to serve children with disabilities." Questions whether all independent schools will be required to be approved for all disabilities, or no disabilities? Suggests that it makes no sense for all independent special education schools to be approved for all disabilities. States the schools will not have the capacity or expertise to cover all the disability categories.	The process laid out in Rule 2229, as amended, provides that a student eligible for special education can attend any approved independent school in Vermont and receive IEP services. The SBE finds that rule 2226.3 can be clarified. First, the SBE will amend 2226.3 to require a school to submit information about the school's "enrollment process." The SBE will also amend the rule to strike the reference to "how it is designed to serve students with disabilities." Second, in 2226.4 the SBE will replace the reference to "student body" with the words "a description of the student body, including demographics" Act 173 eliminated the process of approving schools for certain categories of disability.	Accept Reject or Accept Commenter Request
28	Alicia Hanrahan	Randolph	Yes	Refers to Section 2227 which includes accreditation or licensing for boarding programs. States that DCF does not license all residential facilities/schools. Gives the example that Greenwood School is not licensed by DCF.	The Board is aware that DCF does not license all schools, and so added the accreditation option. The rule was proposed in the knowledge that every school currently approved except for one is either licensed by DCF or accredited.	Reject
29	Alicia Hanrahan	Randolph	Yes	Refers to Section 2229.1 "Enrollment: Requirements for Independent Schools, Students and LEAs." Questions whether this means that each of the academies must enroll all students who apply there. Asks how school choice will work. Suggests modifying language to be more clear.	Act 173 requires that all approved independent schools intending to accept publicly funded tuition must enroll all students eligible for special education services who enroll, subject to a process between the LEA and independent school to ensure the student's IEP can be carried out at the school. Rule 2229, as amended, dictates this process.	Reject
30	Alicia Hanrahan	Randolph	Yes	Refers to 2229.1 in the second sentence. Questions whether this means that independent schools that are approved for IEP/504 students are not eligible for public funding. Questions whether the schools will be all special education funded.	Act 173 requires that all approved independent schools intending to accept publicly funded tuition must enroll all students eligible for special education services who enroll, subject to a process between the LEA and independent school to ensure the student's IEP can be carried out at the school. Rule 2229, as amended, dictates this process.	Reject
31						

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
32	Alicia Hanrahan	Randolph	yes	Refers to 2229.2 in the first sentence. Questions whether the school is required to demonstrate that it has the special education staff to cover the disabilities they will be approved for. Suggests that the school should have to demonstrate they have sufficient staff to cover the disabilities they are being approved for.	Act 173 specifically requires that an approved independent school does not have to demonstrate that it employs staff to deliver every category of special education. Rule 2229, as amended, provides a process to ensure students will receive IEP services.	Reject
33	Alicia Hanrahan	Randolph	yes	Refers to Section 2229.2 in the second sentence. States that the minimum standards of services should be an IEP Team decision. Submits that if a school cannot provide the services outlined in the IEP, then the school should not admit the student. The Secretary should not be establishing the standards of services. Recommends eliminating the language.	Services will continue to be determined through the IEP team process. Rule 2229, as amended, provides a process to ensure students will receive IEP services.	Reject
34	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(e). Suggests eliminating the language. Questions the 30 days to figure out a solution. Submits that the solution should be that the student cannot attend the school if the school cannot provide the student services.	2229.4 has been amended to ensure that first, a student will be admitted to the approved independent school, and then the IEP team and approved independent school will work together ensure services are delivered.	Reject
35	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(f). Questions why the hearing officer process should be included. Suggests eliminating the language.	The SBE is bound by the provisions of Act 173.	Reject
36	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(i). Questions why a student should go to a school that can't meet their needs. Suggests eliminating the language.	Act 173 requires that all approved independent schools intending to accept publicly funded tuition must enroll all students eligible for special education services who enroll, subject to a process between the LEA and independent school to ensure the student's IEP can be carried out at the school. Rule 2229, as amended, dictates this process.	Reject
37	Alicia Hanrahan	Randolph	yes	Refers to 2229.7. Suggests that this process needs a timeframe. Recommends notification within 5 business days.	The SBE will amend the rule to require notification within a "reasonable time."	Accept
38	Alicia Hanrahan	Randolph	yes			Accept

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
1	Alicia Hamrahan	Randolph	yes	2230.1 Exceptional Circumstances - Approval Process. Questions whether this means the Secretary can agree to place a student in a school not approved for special education. Suggests modifying the language to be more clear.	SBE does not propose to change the rule as it is clear and in keeping with IDEA.	Reject
39	Alicia Hamrahan	Randolph		2231.1. Agreement as to costs. States AOE does not have their own contract/agreement with independent or residential facilities for students placed by other agencies. AOE agrees to the contract that has been developed by DCF or DMH. Recommends that AOE has their own contract with residential facilities when placed by another state agency.	The State Board does not support a rule change; the AOE has represented that it will review its practices to ensure they are in compliance with the rules.	Reject
40	Alicia Hamrahan	Randolph	yes	2231.2. Recommends eliminating this requirement.	SBE will not eliminate the rule as it represents best practice and is still needed.	Reject
41	Alicia Hamrahan	Randolph		2232 Rate Approval for Therapeutic Schools. Questions if this is for day placements. States if not, why would an independent school submit an application if already approved by AHS. Recommends that language be clear.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved Independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
42	Alicia Hamrahan	Randolph	yes	2234 Corrections. Questions if this is referring to Community High School of Vermont. Suggests eliminating "as if it were an independent school" because Community High School is already considered to be an independent school.	SBE proposes to strike all words after "2229". SBE proposes to delete "To the extent applicable."	Accept
43	Alicia Hamrahan	Randolph	yes	2235 Tutorial program definition. The reference to "Commissioner" should be changed to "Secretary."	Agree.	Accept
44	Alicia Hamrahan	Randolph		2235.2.6 Renewal. Submits the application should also include information regarding the number of days each student attended. States that tutorials have a habit of keeping students over 6 months.	Only one tutorial is known to have kept students in a tutorial longer than 6 months, and it appears this non-compliance is due to unavailability of residential spaces in/outside of Vermont. These are extenuating circumstances and in fairness should not impact all tutorials' reporting duties.	Accept
45			yes			Accept

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
46	Alicia Hanrahan	Randolph	Yes	2235.3(h). Suggests the program should include a minimum of 10 hours a week, plus special education services.	SBE will amend Rule 2235.2.6 to state that in order to obtain "approval or renewal," it will satisfy the listed criteria.	Accept
47	Alicia Hanrahan	Randolph	Yes	2235.4. Recommends revising language to state that only the AOE rate set tutorials should be included here.	SBE will amend the rule to reflect that only non-residential tutorial programs have a rate set by AOE.	Accept
48	Alicia Hanrahan	Randolph	Yes	2238. Distance Learning Schools. Recommends revising language to state that public funds are not to be used for distance learning schools.	SBE will amend the rule to add a final clause at the end of Rule 2238 to read "...does not meet some or all of the rules of the State Board for approved independent school and is ineligible to receive public tuition payments pursuant to 16 V.S.A. 166(b)(6)." Also, SBE will amend the rule to add a final clause at the end of Rule 2238(g)(1) to read "...provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from public school districts pursuant to 16 V.S.A. 166(b)(6)."	Accept
49	Alicia Hanrahan	Randolph	Yes	2271.4. Recommend that a detailed report is written that includes a recommendation. This should accompany the SBE paperwork that is written up and provided. Should be a separate document.	Amend the rule to specify a "written report including a recommendation" in the first sentence. In the last sentence add "report and" in front of the word "recommendation."	Accept
50	Alicia Hanrahan	Randolph	Yes	2272. Recommends that the language be modified to include minimum course of study in 16 VSA 906.	Section 2272 currently requires compliance with and specifically cites 16 V.S.A. 906.	Reject
51	Alicia Hanrahan	Randolph	Yes	2272. Recommends that the language should be updated to include a discipline policy.	SBE will explore this issue in more depth in the next rulemaking. The topic was not put out for public comment and is a better fit for "phase II" rulemaking.	Reject

State Board Response to Public Comment on SBE Rule 2200

B	C	D	E	G	M
Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
1 Clare O'Shaughnessy	Taxpayer	Yes	<p>2222 Definitions. Submits that "therapeutic" label is inappropriate. Further states that: independent school rules should either use a generic label or distinguish between approved schools which provide treatment and those that do not. To label all approved schools which limit enrollment to IEP/504 students gives a state-approved imprimatur to schools which is tantamount to false advertising. Other states rely on Vermont's approval standards to enroll out-of-state students in Vermont approved schools and labelling schools as therapeutic when they do not provide treatment services for students is false. Vermont DOES have therapeutic schools which are approved by the state to provide treatment for students. These schools go through a more rigorous process (Concurrent Education Rehabilitation and Treatment (CERT)) than is included here, in part to satisfy MEDICAID requirements for treatment services. In order to provide treatment for students, the schools must have appropriately licensed/professional, clinical staff. If an approved IS does not have licensed clinical staff to provide treatment to students, it should not be labeled "therapeutic" anymore than a public school that has a social worker and a counselor on staff should be labeled</p>	<p>The SBE accepts the recommendation of the Act 173 Census Based Funding Advisory Group that the term "therapeutic" is appropriate to describe this category of school.</p>	Reject
52 Clare O'Shaughnessy	Taxpayer	Yes	<p>2222 Definition of "tuition" links to 2225. 2. Does not make sense.</p>	<p>SBE will change the reference so that it refers to 2225, Tuition from Public Funds.</p>	Accept
53					

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
54	<p><u>Name</u> Clare O'Shaughnessy</p>	<p><u>Town or Organization</u> Taxpayer</p>	<p><u>Written Testimony?</u> yes</p>	<p><u>Summary of Requested Rule Change</u> 2222 Definition of "tuition." States: Tuition defined here only refers to the provision of general education. There is no definition for special education "tuition" only "special education fees"; these definitions are inconsistent with Section 2232 which purports to set tuition rates for schools serving IEP/504 students which uses the term tuition. If the intent is to provide these schools with "tuition", based on the definition section, the school is receiving funds for general education. The schools could then receive "special education fees" on top of general education tuition (generally the way the large academies work, tuition plus excess costs for special education or a separate program which may establish a separate tuition pursuant to 16 VSA 826. All schools should receive general education tuition as all schools must provide general education. The payment for special education should be clearly defined in these rules as excess costs or special education tuition. There is inherent inconsistency in schools which meet education quality standards and all the rest of the schools which do not meet those standards. There is inconsistency between statute rule and practice. There is no way for the state as a whole to</p>	<p><u>Proposed SBE Response</u> Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.</p>	<p><u>Reject or Accept Commenter Request</u> Reject</p>

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B	C	D	E	G	M
Name	Town or Organization	Written Testimony?	Summary of Requested Rule Change	Proposed SBE Response	Reject or Accept Commenter Request
<p>1 Clare O'Shaughnessy</p>	<p>Taxpayer</p>	<p>Yes</p>	<p>2232. Rate Approval. States: The initial rate set for an independent school should be robust and mirror the CERT rate process or the Private Non Medical Institution (PNMI) rate process because of the level of detail required in those existing state-run processes. These 2200 series rules do not distinguish between non-profit and for profit schools. The PNMI rules, at least, limit revenue by for profit business to 5% annually. Excess revenues are recaptured and off-set operating expenses in the following year. Since education is an essential government service, the use of for profit businesses (privatizing an essential government service) the State Board can establish a reasonable cap on profits for schools. These rules do not make any effort to protect the Vermont taxpayer and the education fund from fraud, waste and abuse. These rules should state how much profit is reasonable for a for profit institution to earn from public funds. Use of private entities or contracts with private entities for essential government services should be accompanied by efficiencies/economies and equivalent quality of service. If the service is neither quality or economically advantageous for the state, then it results in a waste of precious resources and prevents Vermont from reaching</p>	<p>Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The SBE accepts the CBFAG's recommendation to retain language as drafted. In making this recommendation, the CBFAG relied on AOE examples of how the rule balances protection of public dollars against preservation of independent schools' autonomy in financial management.</p>	<p>Reject</p>
55					

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	<p><u>Name</u> Clare O'Shaughnessy</p>	<p><u>Town or Organization</u> Taxpayer</p>	<p><u>Written Testimony?</u> yes</p>	<p><u>Summary of Requested Rule Change</u> 2232(d)(1) States: The use of broad categories of expenses in a rate application is unhelpful in determining a limited-enrollment independent school's alignment with direct-cost rates because of the necessary break-down in labor costs. For a school to list salaries for all employees in one category, it is impossible to distinguish administration, support, teaching, janitorial, clinical and non-teaching support staff. In order to determine alignment with direct-cost rates, the budget detail has to include costs by position/qualification/service. At a minimum, the budgets submitted by limited-enrollment independent schools should include the level of detail that public school budgets publish to voters.</p>	<p><u>Proposed SBE Response</u> Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The SBE accepts the CBFA's recommendation to retain language as drafted. In making this recommendation, the CBFA relied on AOE examples of how the rule balances protection of public dollars against preservation of independent schools' autonomy in financial management.</p>	<p><u>Reject or Accept Commenter Request</u> Reject</p>
56	<p>Clare O'Shaughnessy</p>	<p>Taxpayer</p>	<p>yes</p>	<p>2232. States that there are no provisions in these rules requiring accountability. Submits that a rate application should be signed under penalty of perjury by the limited enrollment director, owner and board chair to ensure an appropriate level of accountability for proposed budgets.</p>	<p>Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The current AOE application requires a certification of accuracy and a signature from school leadership; this practice can continue under the draft rule as proposed. The AOE determines the appropriate individual to provide certification on behalf of each school, based on school size and governance model.</p>	<p>Reject</p>
57						

State Board Response to Public Comment on SBE Rule 2200

B	C	D	E	G	M	
1	<u>Name</u> Clare O'Shaughnessy	<u>Town or Organization</u> Taxpayer	<u>Written Testimony?</u> Yes	<u>Summary of Requested Rule Change</u> 2232. States that there are no provisions in these rules to required reporting of actual expenditures on an annual basis.	<u>Proposed SBE Response</u> Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject or Accept Commenter Request Reject
58	Clare O'Shaughnessy	Taxpayer	Yes	2232 (j) States that there are no provisions in these rules to hold schools accountable for inappropriate billing practices. To prohibit a school from exceeding the maximum tuition rate without an enforcement mechanism is hollow. Schools which exceed maximum tuition rates without permission from the Secretary should be required to refund the payments to school districts whose budgets are approved by taxpayers which include payments to independent schools.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
59	Clare O'Shaughnessy	Taxpayer	Yes	2232. States that there are no provisions in these rules which distinguish between schools which operate on a school calendar similar to public schools (175 days) and those operating "year round" (220 days). Submits that the problem with the lack of distinction is the impact on what is included in "annual tuition." These rules do not account for the existing practice of independent schools charging extended school year (ESY) services outside of annual tuition. Since the max rate process includes ALL expenses divided by capacity, schools which charge districts for ESY services are using staff whose salaries were included in the max rate. This is double billing and these rules do not prohibit this practice.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
60	Clare O'Shaughnessy	Taxpayer	Yes	2232. States that there are no provisions in these rules which distinguish between schools which operate on a school calendar similar to public schools (175 days) and those operating "year round" (220 days). Submits that the problem with the lack of distinction is the impact on what is included in "annual tuition." These rules do not account for the existing practice of independent schools charging extended school year (ESY) services outside of annual tuition. Since the max rate process includes ALL expenses divided by capacity, schools which charge districts for ESY services are using staff whose salaries were included in the max rate. This is double billing and these rules do not prohibit this practice.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	<p><u>Name</u> Clare O'Shaughnessy</p>	<p><u>Town or Organization</u> Taxpayer</p>	<p><u>Written Testimony?</u> yes</p>	<p><u>Summary of Requested Rule Change</u> 2232. Submits that these rules do not prohibit an approved limited-enrollment school from charging "consulting fees" on top of tuition. If labor and operational costs are fully paid for using the maximum tuition, any additional charges to a school district for any services (regardless of what they are called) is using taxpayer funding personnel to generate revenue in excess of expenditures (proposed budget). This practice is not prohibited by these rules. If a school receives public revenue from tuition to provide a educational services the school should not be able to "sell" additional services to school districts because there is no separation of budgets and personnel between the "business" and the school. This can only be accomplished at the state level as individual school districts do not have visibility of the "big picture" as total costs are spread over sending districts. Visibility of these practices can only be seen and regulated at the state-level. In simpler terms, one entity should not receive revenue for its total operational and labor costs from public funds and simultaneously operate a business selling services to public schools which are the source of the original public funds using the same staff/building/operations, etc. Those services</p>	<p><u>Proposed SBE Response</u> Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The SBE accepts the CBFAG's recommendation to retain language as drafted. In making this recommendation, the CBFAG relied on AOE examples of how the rule balances protection of public dollars against preservation of independent schools' autonomy in financial management.</p>	<p><u>Reject or Accept Commenter Request</u> Reject</p>
61	<p>Clare O'Shaughnessy</p>	<p>Taxpayer</p>	<p>yes</p>	<p>2232(d). Submits that the rule does not define "restricted revenue sources."</p>	<p>The term is defined by the Financial Accounting Standards Board (FASB); the SBE, AOE and CBFAG accept this definition for purposes of rule 2232(d).</p>	<p>Reject</p>
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State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	<u>Name</u>	<u>Town or Organization</u>	<u>Written Testimony?</u>	<u>Summary of Requested Rule Change</u>	<u>Proposed SBE Response</u>	<u>Reject or Accept Commenter Request</u>
63	Clare O'Shaughnessy	Taxpayer	yes	2232(d)(1). States that the rules do not specify or provide clarification on operational costs. The opacity leads to dilution of the education fund. Ex: Fees included in tuition rates paid to parent designated agencies which operate schools. This is only visible at the state level during rate setting. The rules permit such fees to be rolled into operational costs without scrutiny for their reasonable relationship to the level of services provided to students served.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
64	Clare O'Shaughnessy	Taxpayer	yes	2232. Submits that these rules do not provide guidance or clarification regarding program costs as to what expenditures may be included that are reasonably related to the level of services provided to students served.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
65	Clare O'Shaughnessy	Taxpayer	yes	2232(d)(2). States: The rule does not provide for appropriate staffing ratios. Neither the Vermont Standards Board for Professional Educators (VSBE) or the SBE has established appropriate and measurable staffing ratio standards (i.e., case load limits for special educators, case managing and providing specially designed instruction). In order to a school to be able to adequately serve students on IEPs, the amount of FTE's of qualified staff must be directly governed by the services required to be delivered by the school. Staffing ratio standards would have to consider the levels of student need (moderate, intensive needs etc.)	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	<p><u>Name</u> Clare O'Shaughnessy</p>	<p><u>Town or Organization</u> Taxpayer</p>	<p><u>Written Testimony?</u> Yes</p>	<p><u>Summary of Requested Rule Change</u> 2229.6 and 2232(d)(1). Rule 2229.6 and Rule 2232(d)(1) States that all schools receiving public funds must be required to establish and maintain a financial management system which provides for adequate internal control assuring the accuracy of financial data, safeguarding of assets and operational efficiency. States, in addition: prior to receiving approval to receive public funds, all schools must be required to provide documentation to both sending schools and the state upon request to prove educational services were appropriately delivered. This includes attendance, transcripts, progress reporting, grades, etc., including documentation logs showing the delivery of special education and related services were delivered in accordance with IEPs/504 plans. All schools must be required to maintain student records and upon closure provide for the storage, maintenance and upkeep of those records, especially student transcripts/permanent records.</p>	<p><u>Proposed SBE Response</u> The rule does require assurances from a school in Rule 2229 related to providing services and appropriate delivery of services. In regard to provisions for record storage, maintenance and upkeep upon closure, the SBE will amend the rule to require a policy for records in the event of the school's closure.</p>	<p><u>Reject or Accept Commenter Request</u> Accept</p>
66	<p>Sue Ceglowski</p>	<p>Vermont School Boards Association</p>	<p>Yes</p>	<p>The Vermont School Boards Association requests the General Assembly guarantee, through law, that all public and independent schools receiving public funds adopt and exercise, equal and equitable opportunities in admissions, programs and practices in order to operate in the state of Vermont, and</p> <p>That the state invigorate the moribund school approval processes for public and independent schools to assure operational, financial, and educational accountability and excellence.</p>	<p>The comment is directed to the General Assembly.</p>	<p>Reject</p>
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State Board Response to Public Comment on SBE Rule 2200

B	C	D	E	G	M
1 Name Sue Ceglowski	Town or Organization Vermont School Boards Association	Written Testimony? Yes	Summary of Requested Rule Change In a clarifying memo, further analyzes public comment received from other members of the public.	Proposed SBE Response The comment is directed to the General Assembly.	Reject or Accept Commenter Request Reject
68 Rebecca Holcombe		Yes	States that the rules expand a weak architecture for fee-for-service for special education in private schools. This model has been costly and had poor outcomes in the healthcare context.	The funding mechanism was established in Act 173 by the General Assembly. The SBE cannot adopt a different model.	Reject
69 Rebecca Holcombe		Yes	States that the state has proposed a census-based model for special education in public schools, and the opposite for taxpayer funded private schools. Submits that the state is putting public school districts on a budget, and at the same time, through the fee-for-service model for private schools, the state is undermining the effort by making taxpayers and districts responsible for paying private vendors through the model that fragments care, incentivizes billable treatments and is not accountable for outcomes.	The SBE is bound by Act 173 which establishes the funding model. AOE determined that IDEA would prevent independent schools from receiving a block grant for special education, because the duties in IDEA apply to LEAs.	Reject
70 Rebecca Holcombe		Yes	States that the school districts have very little leverage when contracting with independent schools. They are not allowed to negotiate or set prices. They have limited leverage to ensure services are focused on value to prevent further problems later. They retain responsibility for remediation if independent schools fail to provide services required by IEPs.	The SBE is bound by Act 173 which establishes the funding model. AOE determined that IDEA would prevent independent schools from receiving a block grant for special education, because the duties in IDEA apply to LEAs.	Reject
71 Rebecca Holcombe		Yes	With respect to schools associated with designated agencies, states that districts are not given opportunity to challenge billing. Schools are allowed to raise fees without justification.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
72					

State Board Response to Public Comment on SBE Rule 2200

	B	C	D	E	G	M
1	<p>Name Rebecca Holcombe</p>	<p>Town or Organization</p>	<p>Written Testimony? Yes</p>	<p>Summary of Requested Rule Change States that by using the model in the rules, the state incentivizes provision of more services and more expensive services regardless of student need, particularly for Medicaid match services. Provides example of value-based vs fee-for-service in SLP context. States that this model might need to be addressed by the legislature.</p>	<p>Proposed SBE Response The funding mechanism was established in Act 173 by the General Assembly. The SBE cannot adopt a different model.</p>	<p>Reject or Accept Commenter Request Reject</p>
73	<p>Rebecca Holcombe</p>		<p>Yes</p>	<p>Recommends that the State Board address known risks of the fee-for-service model.</p>	<p>The funding mechanism was established in Act 173 by the General Assembly. The SBE cannot adopt a different model.</p>	<p>Reject</p>
74	<p>Rebecca Holcombe</p>		<p>Yes</p>	<p>The current rules undermine inclusive intent by preserving the requirement that any student with disabilities meet other enrollment criteria. Cites 2229 "student meets the other requirements of the school's enrollment policies." Recommends adopting equitable enrollment policies, and consult CA charter school requirements as a model. Gives examples of practices that prevent equitable enrollment: fees, steering, capping enrollment of students with disabilities, messaging, using test scores for enrollment, requesting discipline records, dismissal of students based on student behavior, dismissal of requirements based on parent behavior, religious requirements and statements of faith, exclusion of students eligible for 504 plans.</p>	<p>The SBE has amended Rule 2229 in response to the concerns of this comment, after extensive consultation with members of the Act 173 Advisory Group. The amended rule prohibits enrollment requirements that disadvantage students based on protected class status, disability and socioeconomic status but preserves autonomy of independent schools over their enrollment procedures.</p>	<p>Accept</p>
75	<p>Rebecca Holcombe</p>		<p>Yes</p>	<p>States second risk is transparency and accountability. The rules must ensure greater transparency and accountability for schools that are taxpayer funded and oversight to ensure education funds are only used for approved educational purposes.</p>	<p>Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.</p>	<p>Reject</p>
76						

	B	C	D	E	G	M
1	<u>Name</u> Rebecca Holcombe	<u>Town or Organization</u> Holcombe	<u>Written Testimony?</u> Yes	<u>Summary of Requested Rule Change</u> Submits that PNMI rules are quite robust. Describes proposed rules as weak oversight. States that if there is cost shifting or excess billing, it will be to the education fund and to the less well protected education taxpayers.	<u>Proposed SBE Response</u> Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	<u>Reject or Accept Commenter Request</u> Reject
77	Rebecca Holcombe		Yes	Proposes that the rules should be comparable to the PNMI rules.	Rule 2232 as proposed for public comment represents a difficult compromise among representatives of LEAs, the AOE and approved independent schools. The CBFAG accepts the compromise that was achieved, and the SBE adopts its recommendation to retain the language as proposed.	Reject
78	Marilyn Mahusky	Vermont Legal Aid	Yes	Rule 2229 I. "... and who is placed in an approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA" States this phrase misinterprets the term "placement" as that term is used and understood in the IDEA.	The quoted language is taken directly from Act 173.	Reject
79	Marilyn Mahusky	Vermont Legal Aid	Yes	Submits that this phrase will prevent students with disabilities who live in tuition towns from attending the school he or she would attend if nondisabled. Treats students with disabilities differently, because they may not attend the school of choice until after the IEP team meets and approves the choice.	The quoted language is taken directly from Act 173.	Reject
80	Marilyn Mahusky	Vermont Legal Aid	Yes	Recommends that the Census Based Funding Advisory Group should again consider this provision prior to adoption.	The quoted language is taken directly from Act 173.	Reject
81	Rebecca Holcombe		Yes	For a particular approved independent school, the school and parish received approximately \$362,000 in COVID relief dollars, but the school says it does not have the resources to accommodate a child with a mental health disability in the midst of a pandemic.	The SBE has amended Rule 2229 in response to the concerns of this comment, after extensive consultation with members of the Act 173 Advisory Group. The amended rule prohibits enrollment requirements that disadvantage students based on protected class status, disability and socioeconomic status but preserves autonomy of independent schools over their enrollment procedures.	Accept
82						



Vermont Independent
Schools Association

July 28, 2021

To: State Board of Education Rules Subcommittee
From: Mill Moore, Executive Director
Re: SBE Policy Conditions on Independent School Approvals

The five business-day reporting requirement the Board imposes when granting independent school approvals is impractical and burdensome for schools and for the Agency of Education. VISA requests the subcommittee to recommend a modification that will reduce burdensome reporting and data collection while not materially altering Board awareness of significant developments.

Modification does not require a rules change. The requirement is a matter of SBE policy. Note however that 16 V.S.A. § 166 (b) (8) (A) (i)-(vii)—quoted on p.2—requires a school to report “within five days after its knowledge” any of a series of adverse financial events. (This statute is repeated verbatim in proposed Rule 2223.8.)

The Board policy states: *“This approval is conditioned on the requirement that the school reports to the Agency of Education within five business days whenever any changes occur in enrollment, programs, policies, facilities, financial capacity, staffing or administration during the approval period.”*

Problems with this requirement came to light during the therapeutic school rate-approval rule stakeholder meetings with Agency of Education. Therapeutic schools experience frequent short-term enrollment changes because students come and go due to the federal “least restrictive environment” requirement for fulfilling an IEP. Aiming to illustrate this short-term enrollment variability, VISA sought the AOE records of therapeutic school enrollment change reports. The Agency replied that it does not retain the reported data.

Though the particular focus was on the enrollment change reporting requirement, the situation calls into question all of the five-day reporting requirements, except for those events specified in 16 V.S.A. § 166 (b) (8) (A).

Requiring reports on a five business-day deadline causes burdensome, unproductive work with no clear benefit that could not also be realized within a longer deadline. VISA recommends extending the deadline to 30 days. The policy requirement to report changes in “financial capacity” could be deleted entirely, as it now is covered by statute and a proposed rule (presuming the Secretary of Education promptly forwards any such reports to the Board).

A 30-day deadline is sufficient for the Board and Agency of Education to remain well informed about changes occurring at approved independent schools while also diminishing the reporting burden on the affected schools and on the Agency.

+ + +

1

§ 166. Approved and recognized independent schools

(b) (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).

SBE Proposed Rules – 2200 Series

Independent Schools

August 2, 2021

William J. Mathis

Independent schools are contractors to the state. The state cannot delegate the Constitutional responsibility for providing and monitoring the quality of education but it can contract out the delivery of services and establish contractual conditions. In fact, it is the state's inescapable responsibility to do so. The relation between the state and independent schools has waxed and waned across the years. There is, however, general agreement that the rules need to be reviewed.

An earlier state board (2017), explicitly sought to address particular concerns:

- Financial accountability – Some private schools had financial difficulty and closed at great inconvenience and disruption to all concerned.
- Equal opportunities - Some independent schools were said to employ unequal admissions practices particularly for special education children.
- The Agency of Education does not (and still does not) have the resources to properly conduct the application, renewal and evaluative processes. The resulting fog obscured the proper addressing of the previous two concerns.

This effort came to naught.

Now comes the recomposed state board with a new effort at revising these rules. Reflecting a good deal of commendable work and effort they, nevertheless, fail to properly address important deficiencies.

Some specific comments:

- An overworked two-person review team(s) does not represent sufficient capacity to evaluate and monitor independent schools (proposed rule 2223).
- The curriculum requirement is unacceptably weak (16 VSA 906).
- The enrolling of special education students (2223.3 and 229) is ambiguously worded, of questionable legality and it's wrong.
- Having the Independent Schools be judge and jury of offenses of their colleagues (222.32), even with an SBE appeal written in, is inappropriate and creates an impression of impropriety. To be saddled with this process in a potentially tense time invites trouble. A recent case of the independent schools as investigatory body was overly late, and in some eyes, of insufficient thoroughness.
- "Lacks financial capacity." A vitally important criterion but the term lacks specificity. Again, this invites trouble.

- Tuition section (22254) – Suggest waiting until the Maine case is decided by the U. S. Supreme Court and the implications are digested. Setting more “unprecedents” simply traps the state board and entangles an already unpredictable situation.
- Special education (229 & 229.3) – This will prove problematic. “Assurances” is too weak a phrase and open to interpretation.
- Out of district placement – The section seems redundant and may conflict with federal and state law. Opening to unilateral placements (or the appearance thereof) has resulted in expensive procedures .

It is surprising to not find any reference to the state auditor’s report of last month (July 2021) which addresses these same rules. Whether the 25 recommendations are solid in whole or part requires consideration.. With the rules open, failure to consider these recommendations may be an error that will take years to correct.

William J. Mathis spent more than a quarter century working with and teaching these rules. He served on the Vermont state board of education during the previous effort of reviewing these rules.

AOE Suggestions for Further Amendment to Draft Rule 2200

Background

After these draft rules were pre-filed with ICAR, several items of further rule development were jointly identified by members of the State Board Subcommittee on Rule Series 2200 and Agency of Education staff. In each instance, the Agency believes that the proposed amendment is noncontroversial. In addition, all of the following proposals have been reviewed in at least one publicly warned meeting. The Agency is presenting the language which appears below during the public hearings on draft rule 2200 so that the public can receive notice of these proposals and the language can be vetted through the rest of the APA rulemaking process. Anyone with questions about these proposals or suggestions for alternate language can contact Emily Simmons, AOE General Counsel at emily.simmons@vermont.gov.

Note that when, as here, a section of the draft rule is under consideration that involves multiple instances of amendment, it can be quite confusing to denote which marked-up text has already been adopted by the State Board at the initiation of the rulemaking process and which marked-up text is part of a new proposal. For this document, the text of the rule is marked-up (i.e. strikethrough of deleted language and underline of new language) as appears in the ICAR filing. Further mark-up that was not part of the ICAR filing is highlighted.

1. Proposals Related to the State Auditor's March 2021 Report

The Auditor's report identified two instances where requirements for approved independent schools were clearly mandated in statute, but were not clearly included as part of the independent school approval process. This proposal would add a reference to the minimum course of study (16 V.S.A. § 906) and a reference to the requirement to conduct background checks for certain hires and contractors.

Section 22276 Approval-

The 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 16 V.S.A. section § 906 of this title and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The board must make the following findings prior to approval:

The board may approve an independent school if it finds that:

22276.1 The description of the school in the approval application is accurate.

22276.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate

22276.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library services, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

22276.4 The school has classroom, laboratory, library and other facilities necessary to operate its program,

22276.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

22276.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

22276.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

22276.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

22276.7 The school employs a sufficient number of professional staff for the population served.

22276.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

22276.9 The school maintains a register of the daily attendance of each of its enrollment.

22276.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving the same grades.

22276.11 The school has the financial capacity to carry out its ~~educational purposes~~ stated objectives for the period of approval. For purposes of these rules, "financial capacity" shall mean anticipated revenue and funds on hand sufficient to meet a school's stated objectives.

2227.12 The school complies with the requirements of 16 V.S.A. §255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry.

2. Proposal Initiated by VHEC to Amend Postsecondary Accreditation Timeline

In 2018, the Vermont Higher Education Council requested that the State Board address language in the rules for postsecondary certification that may constrain the ability of a new institution to begin operations in Vermont. The current rule requires that an institution must obtain accreditation prior to receiving renewal of its original certificate of degree granting

authority. It is practically impossible for an institution to obtain accreditation in the current timeline. The Agency has identified a solution that would allow up to 10 years for the school to receive its accreditation and then seek renewal from the State Board.

2243.3 Renewal of Certification

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification. Any school seeking renewal, that has obtained initial approval to offer or operate a program of college or professional education for credit or degree, on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the US Department of Education, in order to be considered eligible for renewal by the State Board within the first 10 years of operation.

3. Proposal Related to the Public Accommodations Act

On July 28, 2021, State Board Chair Olsen wrote to Secretary French regarding ways to strengthen alignment between the process of independent school approval and the statutes that apply to approved independent schools. In his letter, Chair Olsen correctly pointed out that Vermont's Public Accommodations Act (PAA) prohibits any school in Vermont from discriminating on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity. 9 V.S.A. § 4500 – 4502. Current Rule 2225.6 states that an independent school must adhere to all lawful requirements relating to facilities in order to be approved, and the PAA is an example of such a requirement. In order to make it clearer that compliance with the lawful requirements relating to facilities includes compliance with the PAA, the Agency suggests the following language.

Section 22265 Application.

An application for initial approval or renewal of approval shall contain the following:

22265.1 The name and address of the school.

22265.2 A statement of the school's philosophy and purpose.

22265.3 A description of the school enrollment including a statement of how ~~whether~~ it is designed to serve children ~~with a particular disability or with disabilities generally~~.

22265.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

22265.5 A description of the curriculum, methods of instruction, evaluation procedures and special services ~~which~~ that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A., ~~Section~~ § 906.

22265.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable ~~s~~State and federal requirements, including compliance with Vermont's Public Accommodations Act, 9 V.S.A. § 450 - 4506.

AOE Suggestions for Further Amendment to Draft Rule 2223

After these draft rules were pre-filed with ICAR, an additional rule development was identified by members of the State Board Subcommittee on Rule Series 2200 and Agency of Education staff. The Agency believes that the proposed amendment is noncontroversial. In addition, the following proposal has already been reviewed in at least one publicly warned meeting. The Agency is presenting the language that appears below during a public hearing on draft rule 2200 so that the public can receive notice of this proposal and the language can be vetted through the rest of the APA rulemaking process. Anyone with questions about this proposal can contact Donna Russo-Savage, Staff Attorney, at Donna.RussoSavage@vermont.gov.

Background

Vermont law requires the State Board of Education to approve independent schools offering elementary or secondary education if the Board finds that the school “provides a minimum course of study pursuant to section 906 of [Title 16] and that [the school] substantially complies with the Board's rules for approved independent schools.” State Board Rule 2223 permits the Board to grant approval to an independent school that is accredited by an agency recognized for those purposes by the State Board and listed in Rule 7320, without the need for additional evaluation or process.

In March 2021, the Executive Director of the Association of Independent Schools in New England (“AISNE”) asked the State Board to include AISNE on the Rule 7320 list of currently recognized accrediting agencies. AISNE representatives attended a meeting of the Rule 2200 Subcommittee where they presented an overview of the organization and responded to questions.

The Subcommittee determined that adding AISNE to the list of recognized accrediting agencies would assist smaller independent schools, particularly independent elementary schools, to achieve “approved” status under current State Board rules. The AISNE accreditation process is of similar rigor to that used by the New England Association of Schools and Colleges (“NEASC”), but it is more specifically geared to elementary schools and is a more affordable option for smaller independent schools. By accepting AISNE accreditation, the State Board would provide an additional pathway by which an independent K-8 school could demonstrate compliance with current approval requirements.

The Rule 2200 Subcommittee had further discussion of the proposed recognition of AISNE at the Subcommittee’s meeting on August 2, 2021. Among other issues, the Subcommittee considered the need to update other names currently on the 7320 list, the intent either to amend the Rule 2200 Series to include substantive requirements and a process by which agencies would be recognized or to incorporate the 7320 list into the Rule 2200 Series, and the desire not to delay the recognition of AISNE. The Executive Director of the VT Independent Schools Association was present and indicated the Association’s support for recognizing AISNE as soon as possible.

The Subcommittee asked the Agency to prepare draft documents initiating rulemaking to add AISNE to the 7320 list of currently recognized accrediting agencies. Subsequently, the State Board's Chair and Vice-Chair suggested a different approach to accomplish the multiple inter-related goals discussed at the Subcommittee's August 2 meeting in a simpler and more efficient manner. The new approach would also repeal all other rules in the Rule 7000 Series because they provide no independent content, but rather cite statutes and other rules that address the topic.

The newly-proposed, multi-step process is as follows:

1. During the public comment period for the Rule 2200 Series in August, the Agency will:
 - a. Propose to amend Rule 2223 to explicitly identify AISNE as a recognized accrediting agency.
 - b. Propose to amend the sentence in Rule 2223 that cross-references the list of currently recognized agencies in Rule 7320 to indicate the Board's intent to repeal Rule 7320 effective July 1, 2024.
2. For the State Board's consideration in September, the Agency will prepare drafts of all documents necessary to initiate rulemaking to:
 - a. Repeal Rule 7320, effective July 1, 2024 (or on a different date subsequently set out in adopted rule or statute).
 - b. Repeal all other rules in the 7000 Series, effective 15 days after the amendment's adoption per 3 V.S.A. § 845.
3. During the second phase of Rule 2200 Series amendments, which is anticipated to occur in 2022, the State Board will propose amending Rule 2223 to:
 - a. Remove the cross-reference to Rule 7320.
 - b. Include in the 2000 Series, either (i) substantive requirements and a process by which the State Board would recognize accrediting agencies or (ii) a list of State Board-recognized accrediting agencies.

Proposed Language that the Agency Offers as Public Comment to Rule 2223

In furtherance of item #1 above, the Agency offers the following revised language:

Section 2223 Reciprocity.

Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. ~~Such~~ In addition to the accrediting agencies ~~are~~ listed in Rule 7320 of the Board Manual of Rules and Practices, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Department of Education by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown the school must undergo the approval process.

PUBLIC COMMENT

TO: Board of Education of the State of Vermont
SBE.PublicComment@vermont.gov
FROM: Megan R.C. Calla, Esq.
MeganRCCalla@gmail.com
DATE: September 18, 2021
RE: Suggestions for Further Amendment to Draft Rule 2200;
21P023: Independent School Program Approval

I write this comment as a member of the public, a citizen of Vermont, and as someone interested in potentially founding an independent school. I have structured my comment in stages: my general impression of the proposed amendments including a concern I would like the Board to address, though I do not have proposed language to offer, and some minor language adjustments to improve readability of the rule that I believe will serve professionals as well as the public going forward.

I was very interested to learn of the current status of the rules (before the drafted amendments), and, on a personal note, I am very happy with the direction that the Rule Series 2200 changes have taken. There has obviously been care taken in meeting the needs of all of Vermont's students while addressing the reality that not all schools will be able to adequately meet the needs of every student, while staying flexible in the face of a changing legal landscape.

My main concern is in the rather vague references to the LEA's determination of whether or not the enrollment of a student who requires additional support is "appropriate" as referenced in draft Rule 2229.4(b)¹. It is reasonable to assume that "appropriate" is left vague intentionally, allowing it to encompass compliance with state and federal law while taking other factors into consideration. "[A]n appropriate placement" is also used in 2229.1.² There is some language³ in this section set to be struck from the rule that hints at a definition of "appropriate," there is no clear guidance as to what complete standards an IEP team or an LEA might use in their determination. I would be very happy to see a definition added to Section 2222 to clarify this issue.

¹ 2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School. "(b) The student's IEP team or the LEA shall determine whether the enrollment is an appropriate placement and least restrictive environment."

² 2229.1 Enrollment: Requirements for Independent Schools, Students, and LEAs.

³ a determination that its staff, programs and facilities meet state and federal special education standards

Proposed Language Changes

The following highlighted sections are my recommended updated to the rules for the sake of consistency and readability. I noticed in some sections that the rules were parenthetically explained.⁴ I would like to encourage this, even if the Board determines that it is only appropriate for the Definitions section. I have included it in Rule 2223.3 where I found it most helpful. Further, I found the word choice in Section 2229.4 to be unclear as to the meaning of the section. I have suggested a different word based on my understanding of the intended meaning.

Section 2222 Definitions.

Special Education Fees: means funds paid by an LEA (school district or supervisory union) to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

...

2223.3 General Conditions for Approval.

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that 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 recommended for approval only on the condition that the school meets the requirements of SBE Rule 2229. A school meeting approval requirements in SBE Rules 2226 (Application) and 2227 (Approval) but choosing not to enroll students requiring special education services may be recommended for approval but may not receive public tuition. 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, 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.

...

⁴ An example is the definition in Section 2222 of "Approved Independent School: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds)."

2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School.

- (a) The student or the student's parent shall voluntarily request the enrollment.

 - (1) In this subsection, to "enroll" a student means that an approved independent school will offer a position in the school to a student, provided that the provisions of this subsection relating to LEA responsibilities are met and the student meets the other requirements of the school's enrollment policies.
 - (2) A school shall enroll all publicly funded students on a first come first served basis until capacity is reached.
- (b) The student's IEP team or the LEA shall determine whether the enrollment is an appropriate placement and least restrictive environment.
- (c) The student's IEP team and the LEA shall comply with all applicable federal and State requirements.
- (d) If the student's enrollment, pursuant to subsection (b) of this Rule, is conditioned based on provision of certain services in the student's IEP, then the LEA and the school shall work collaboratively to identify a solution.
- (e) Within 30 days the LEA and the school must determine if they have identified a solution that will enable the student's enrollment to proceed.

Thank you to the Board for taking the time to read my comment. I look forward to seeing the rulemaking process resolve.

11/9/2021

Mail - Samuelson, Jennifer - Outlook

Fw: VISA adopts non-discrimination statement

Olsen, Oliver <Oliver.Olsen@vermont.gov>

Thu 9/30/2021 4:56 PM

To: Simmons, Emily <Emily.Simmons@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>; Cutler, Judy <Judy.Cutler@vermont.gov>

FYI - we should add this to the public comment log.

From: Mill Moore <mill@vtindependentschools.org>

Sent: Tuesday, September 28, 2021 9:51 AM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>

Subject: VISA adopts non-discrimination statement

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Oliver,

FYI, here is the text of a statement recently adopted by the Vermont Independent Schools Association:

VISA does not support use of public funds in any school with discriminatory enrollment or hiring practices.

Mill

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Vermont Independent Schools Association
Mill Moore, Executive Director
802-436-2112
www.vtindependentschools.org

6

11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: Independent School rule comments

SBE - Public Comment <SBE.PublicComment@vermont.gov>

Wed 11/9/2021 9:55 AM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>; Lovett, Tom <Tom.Lovett@vermont.gov>

Cc: Simmons, Emily <Emily.Simmons@vermont.gov>

Good morning,

Attached please find a written comment from Alicia Hanrahan re: the proposed 2200 Rule Series revisions submitted to the SBE's public comment email box.

Thank you,
Judy

Judith Cutler
Investigator / Public Records Officer
Vermont Agency of Education
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Pronouns: She/Her/Hers

From: Alicia Hanrahan <aliciaamh@gmail.com>
Sent: Tuesday, November 2, 2021 5:08 PM
To: SBE - Public Comment <SBE.PublicComment@vermont.gov>
Subject: Independent School rule comments

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Please accept my comments for the independent school rule review. Thank you.

Alicia Hanrahan
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SBE Language	Question/Comment	Implications/Recommendations
<p>Approved Independent School: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds).</p>	<p>Does this mean that every independent school can receive public funding?</p>	<p>If this is the case, then schools like Lake Champlain Waldorf, Good Shepherd Catholic School, Killington Mountain School, Mater Christi, Mt Mansfield Ski Club and Academy, Mt Snow Academy, independent Kindergartens etc... are eligible for students to attend at public expense.</p>
<p>Same as above</p>	<p>Does this mean that a student eligible for special education can attend any independent school in VT?</p>	<p>If so, then a special education student could attend an independent/recognized school that isn't approved for special education. How would the students receive their special education services?</p>
<p>Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or 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 an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.</p>	<p>Not all students who are on an IEP need a therapeutic school...so why would we categorize all of them to be Therapeutic Approved Schools? For example, Inspire for Autism is a school for kids with significant needs...specifically kids with Autism. It's not therapeutic in the Mental Health sense. Also, the Greenwood School is for kids with learning disabilities. They are not a therapeutic school.</p> <p>Only CERT schools are considered to be therapeutic.</p>	<p>eliminating the word therapeutic</p>
<p>Same as above</p>	<p>Does this mean that every independent school must be approved for all disabilities? Some schools are only for specific disabilities.</p> <p>Inspire for Autism is specifically for kids on the Autism Spectrum...why would they take a student who has a learning disability? Greenwood takes</p>	<p>Language should be clear if a school will be approved for all disabilities or if they can pick and choose.</p>

	kids with learning disabilities, why would they want to be approved for Emotional Disturbance or Autism?	
Section 22232 Procedure. Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. Independent schools which are recognized as provided for in 16 V.S.A., § 165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements of § SBE Rule 22265 below. Upon receipt of an application for initial approval or renewal of approval, the commissioner Secretary shall appoint a review committee of at least two persons.	The two person team should include one person who has knowledge and experience in special education if the school wants to be approved for special education	Recommend modifying the language of 2 person team to include one person with knowledge and experience in special education if the school wants to be approved for special ed.
The committee shall present a written recommendation regarding approval to the Commissioner Secretary. A copy of their recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before the Secretary makes a recommendation regarding approval is made by the Commissioner Secretary to the State Board. The report shall contain the findings of other agencies of state government which that inspect such facilities.	Is it a report or a written recommendation?	Recommend that a detailed report is written that includes a recommendation. This should accompany the SBE paperwork that is written up and provided. Should be a separate document.
22254.23 Tuition for Out of State Schools In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the	Does the Host State need to be approved by their AOE for specific disabilities?	

<p>host state or by an accredited or approved by the host state or by an accrediting agency recognized by the State Board. The Board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.</p>		
<p>22265.3 A description of the school enrollment including a statement of how it is designed to serve children with disabilities</p>	<p>All independent schools will be required to be approved for all disabilities, or no disabilities?</p>	<p>Makes no sense for all indep special education schools to be approved for all disabilities. The schools will not have the capacity or expertise to cover all of the disability categories.</p>
<p>In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.</p>	<p>DCF does not license all residential facilities/schools...Greenwood school for example is not licensed by DCF.</p>	
<p>In order for an in-state independent school to receive public tuition, it shall enroll any student with an individualized education program who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA.</p>	<p>Does this mean that each of the Academies (STJ, LI, B&B and Thetford) must enroll ALL students who apply there? How will school choice work?</p>	<p>Modify language to be more clear.</p>

<p>This requirement shall not apply to an independent school that limits enrollment to students who are on an IEP 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 LEA and the school</p>	<p>Does this mean that indep schools that are approved for IEP/504 students are not eligible for public funding? Is it all special education funded?</p>	<p>Modify language to be more clear</p>
<p>An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition.</p>	<p>Is the school required to demonstrate that they have special education staff to cover the disabilities that they will be approved for?</p>	<p>Indep schools should demonstrate if they have sufficient staff to cover the disabilities they are being approved for.</p>
<p>The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.</p>	<p>This should be an IEP Team decision. If a school cannot provide the services outlined in the IEP, then the school should not accept the student. The Secretary should not be establishing the standards of services.</p>	<p>Eliminate language</p>
<p>(d) If the student's enrollment, pursuant to subsection (b) of this Rule, is based on provision of certain services in the student's IEP, then the LEA and the school shall work collaboratively to identify a solution.</p>	<p>If the school cannot provide the services in the IEP, then the school should not accept the student. The student should not go without services based on what the school can provide. What type of solution would be sufficient? A student going without services?</p>	<p>Eliminate language. It goes against IDEA.</p>
<p>(e) Within 30 days the LEA and the school must determine if they have identified a solution that will enable the student's enrollment to proceed.</p>	<p>30 days to figure out a solution? The solution should be that the student cannot attend that school if the school cannot provide the student services.</p>	<p>Eliminate language</p>
<p>If the LEA and approved independent school do not agree on whether the independent school is able to provide the services on the</p>	<p>Why go through all of this? If the school cannot provide services, then the parents can revoke their right to special education...OR, the student</p>	<p>Eliminate language</p>

<p>student's IEP, then the LEA and independent school shall jointly contract with a hearing officer to conduct a hearing to make a determination which shall be final. The cost of the hearing officer shall be shared equally between the parties. (g) If either a hearing officer, or the LEA and the school, certify that the independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately make another appropriate placement that satisfies the federal and State requirements to provide the student with a free and appropriate public education in the least restrictive environment. If these conditions are satisfied: (1) The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under SBE Rule 2223.8 due to its failure to enroll or continue to enroll the student; and (2) No private right of action shall be created on the part of the student or the student's family or any other private party to require the LEA to place the student with the approved independent school or to require the school to enroll the student. (h) This Rule 2229.4 shall not apply to a therapeutic independent school.</p>	<p>must go to a different school that can provide the services. What is the point of including a hearing officer?</p> <p>Additionally, why are therapeutic schools not included in this? Currently, there is an exceptional circumstance/waiver process if the LEA cannot place a student in a school that is not able to provide services.</p>	
<p>(i) For enrollments sought after the start of the school year, the LEA shall agree to pay tuition for the enrollment sought by the student until agreement is reached with the school or until the hearing officer issues an</p>	<p>Again, why allow a student to go to a school that can't meet their needs and then allow the LEA to pay for a school knowing that they can't meet their needs?</p>	<p>Eliminate language</p>

<p>opinion pursuant to subsection (f) of this Rule.</p>		
<p>After receiving approval for public tuition, an independent school shall notify the Secretary of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board for a change to an independent school's approval for public tuition purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the Board. If the school disagrees with the proposed change to its approval for public tuition purposes, the Board shall hear the matter in accordance with the requirements of SBE Rule 1230, et seq.</p>	<p>This should include a time frame.</p>	<p>The school should notify the Secretary in 5 business days.</p>
<p>(2) 2230.1 Exceptional Circumstances - Approval Process. Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to SBE Rule 2223, but that has not been approved to receive public tuition</p>	<p>Does this mean that the Secretary can agree to place a student in a school NOT approved for special education, knowing that the student has a need for special education supports and services?</p>	<p>Modify the language so it's clear</p>
<p>2231.1 Agreement as to Costs. The agreement outlines tuition,</p>	<p>AOE does not have their own contract/agreement with</p>	<p>Recommend that AOE has their own contract with residential</p>

<p>room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948, the agreement shall be with the Secretary.</p>	<p>independent/residential facilities for students placed by other agencies. AOE agrees to the contract that has been developed by DCF or DMH</p>	<p>facilities when placed by another state agency</p>
<p>2231.2 Agreement as to Non-Instructional Services</p> <p>For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.</p>	<p>There is not a written agreement between the LEA and residential facilities.</p> <p>A letter from AOE to the LEA is written if a student has been "cleared" to attend a residential facility</p> <p>Residential facilities do not ask the LEA to enter into a formal agreement (with the exception of Hillcrest in MA)</p>	<p>Recommend eliminating this requirement.</p>
<p>Section 2232 Rate Approval for Therapeutic Approved Independent Schools. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1</p>	<p>Is this for day placements? If not, then why would an independent school submit an application if already approved by AHS? For example, the VT School for Girls in Bennington ONLY takes students placed by AHS...no day students. Would they be subjected to submit an application? If so, what would be the point if they don't accept day students?</p>	<p>Language should be clear.</p>
<p>Section 2234 Corrections Education Program Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2229, as if it were an independent school.</p>	<p>If this is referring to Community High School of VT...this is already considered to be a VT indep school. If this is referring to the old Woodside, it's currently not in existence. So what is the purpose of this section?</p>	<p>Eliminate language as it's already considered to be an independent school. Not necessary.</p>
<p>22350.1 Definitions. "Tutorial program" means education</p>	<p>Should say Secretary, not commissioner</p>	<p>Change the language</p>

<p>provided to a pupil student who is placed in a short-term program that is not administered by a LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. § 166 . The average length of stay for children in a tutorial program shall be not more than six months. The Commissioner may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.</p>		
<p>Tutorial 22350.2.6 Renewal. Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when a site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.</p>		<p>The application should also include information regarding the number of days each student attended. Tutorials unfortunately have a habit of keeping students over 6 months</p>
<p>The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.</p>	<p>Should this be 10 hours per week of gen ed services and then special education on top of that? What if a special ed student requires: Math 5x per week for 30 min Reading 5x 30 Writing 5x 30</p> <p>Then the student only receives 30 min per day of gen ed curriculum?</p>	<p>Recommend 10 hours per week PLUS their special ed services</p>

<p>22350.4 Rate Approval for Tutorial Programs. Each tutorial program shall annually report its rates for tuition, related services, and room and board, if applicable, to the Secretary on a form prescribed for that purpose</p>	<p>Why would 204 Depot, 206 Depot or Mountainside provide AOE with their rate as their rate is not set by AOE? It's set by AHS' Dept of Rate Setting?</p>	<p>Recommend revising language to state that only the AOE rate set tutorials should be included here</p>
<p>Secretary shall review each tutorial program's annual rate report. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination...</p>	<p>See above</p>	<p>See above</p>
<p>Section 22383 Definition. A "Distance Learning School"</p>		<p>Add language that reflects that public funds are not to be used for Distance Learning Schools</p>
<p>Indep Kindergartens: 2271.4 Report to the Secretary.. The appointed educator shall present a written recommendation regarding approval to the Secretary. The report of the appointed educator shall incorporate the determination of DCF. concerning compliance with the "DCF Kindergarten Regulations". A copy of the recommendation shall be provided at the same time to the applicant.</p>	<p>Is it a report or a recommendation?</p>	<p>Recommend that a detailed report is written that includes a recommendation. This should accompany the SBE paperwork that is written up and provided. Should be a separate document.</p>
<p>Indep Kindergartens: T- teaching skills and concepts in mathematics, language arts, science, the arts, and health that are consistent with principles of child development</p>	<p>If this is to be consistent with 16 VSA 906/ Course of Study, the language should say: Reading and Writing, not Language Arts. It also does not mention History/Civics/Government or PE</p>	<p>Modify the language to include all of the Courses of Study rules in 16 VSA 906</p>
<p>Indep K</p>	<p>Should there be any language about a discipline policy and whether or not they can suspend/expel a student?</p>	<p>Update language to include a discipline policy</p>

Thank you for considering my comments. If you have any questions, you can reach me by email at aliciaamh@gmail.com or by cell phone at 802-522-9629.

Alicia M. Hanrahan
BA in Speech Correction
MA in Special Education

11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: regarding suggested language for Draft Rule 2200

Simmons, Emily <Emily.Simmons@vermont.gov>

Wed 11/3/2021 9:01 AM

To: Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>; Olsen, Oliver <Oliver.Olsen@vermont.gov>; SBE - Public Comment <SBE.PublicComment@vermont.gov>

More public comment just received. I have added this to my summary document.

-Emily

Emily Simmons

General Counsel
Agency of Education

o) 802-828-1518 | c) 802-595-4775

1 National Life Drive | Davis 5 | Montpelier, VT 05620-2501

From: Lisa Purcell <lisa.purcell@comcast.net>

Sent: Wednesday, November 03, 2021 5:15 AM

To: Simmons, Emily <Emily.Simmons@vermont.gov>

Subject: regarding suggested language for Draft Rule 2200

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Ms. Simmons – I'm writing to you in regards to the Agency's suggested language in the Amendment to Draft Rule 2200, specifically regarding the important language prohibiting discrimination.

Here excerpts from your AOE Suggestions for Further Amendment to Draft Rule 2200:

"On July 28, 2021, State Board Chair Olsen wrote to Secretary French regarding ways to strengthen alignment between the process of independent school approval and the statutes that apply to approved independent schools. In his letter, Chair Olsen correctly pointed out that Vermont's Public Accommodations Act (PAA) prohibits any school in Vermont from discriminating on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity. 9 V.S.A. § 4500 – 4502.

Current Rule 2225.6 states that an independent school must adhere to all lawful requirements relating to facilities in order to be approved, and the PAA is an example of such a requirement. In order to make it clearer that compliance with the lawful requirements relating to facilities includes compliance with the PAA, the Agency suggests the following language.

22265.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements, including compliance with Vermont's Public Accommodations Act, 9 V.S.A. § 450 – 4"

Now, why would this important human rights language be stuck on the end of a sentence that begins with "a description of physical facilities"?

I'd encourage you to place this anti-discrimination language more prominently, giving it its own Rule number and thus prominence in the process for Approval of Independent Schools.

Thank you for your consideration.

Lisa Purcell

Chittenden, VT 05737

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11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: Public Comment on SBE Rule 2200 series

SBE - Public Comment <SBE.PublicComment@vermont.gov>

Thu 11/4/2021 8:34 PM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>
Cc: Cutler, Judy <Judy.Cutler@vermont.gov>

Hello Oliver and Jen,

Here is public comment that was received today. I will add it to my summary document.

Very best,
Emily

Emily Simmons
General Counsel
Agency of Education
o) 802-828-1518 | c) 802-595-4775
1 National Life Drive | Davis 5 | Montpelier, VT 05620-2501

From: Clare O'Shaughnessy <clareosh63@gmail.com>
Sent: Wednesday, November 03, 2021 6:53 PM
To: SBE - Public Comment <SBE.PublicComment@vermont.gov>
Subject: Public Comment on SBE Rule 2200 series

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Please see attached.

v/r,

Clare O'Shaughnessy
Concerned Vermont Taxpayer

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Rule	Concern/Comment
<p>Section 2222 Definitions</p>	<p>“Therapeutic” label is inappropriate. Independent school rules should either use a generic label or distinguish between approved schools which provide treatment and those that do not. To label all approved schools which limit enrollment to IEP/504 students gives a state-approved imprimatur to schools which is tantamount to false advertising. Other states rely on Vermont’s approval standards to enroll out-of-state students in Vermont approved schools and labelling schools as therapeutic when they do not provide treatment services for students is false.</p> <p>Vermont DOES have therapeutic schools which are approved by the state to provide treatment for students. These schools go through a more rigorous process (Concurrent Education Rehabilitation and Treatment (CERT)) than is included here, in part to satisfy MEDICAID requirements for treatment services. In order to provide treatment for students, the schools must have appropriately licensed/professional, clinical staff. If an approved IS does not have licensed clinical staff to provide treatment to students, it should not be labeled “therapeutic” anymore than a public school that has a social worker and a counselor on staff should be labeled “therapeutic.” The VT Department of Mental Health has established minimum standards for children’s mental health which should be linked to a determination that a school provides “therapeutic” services. Those schools which do provide treatment are associated with Designated Agencies. Only schools with qualified staff to provide treatment should be labeled “therapeutic” otherwise the label falsely implies services which are not available to students and is misleading.</p> <p>Link to standards and PNMI rules for a sample to go by for robust fiscal accountability:</p> <p>https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Manuals/CMH_Guidance_2020_FINAL_9.10.2020.pdf</p> <p>https://dvha.vermont.gov/sites/dvha/files/doc_library/Adopted%20V.P.N.M.I.R.%20Effective%209.8.15.pdf</p>
	<p>“Tuition” definition links to SBE 2225.2 “Tuition for Out of State Schools” which does not make sense. Tuition defined here only refers to the provision of general education. There is no definition for special education “tuition” only “special education fees”; these definitions are inconsistent with Section 2232 which purports to set tuition rates for schools serving IEP/504 students which uses the term tuition. If the intent is to provide these schools with “tuition”, based on the definition section, the school is receiving funds for general education. The schools could then receive “special education fees” on top of general education tuition (generally the way the large academies work, tuition plus excess costs for special education or a separate program which may establish a separate tuition pursuant to 16 VSA 826. All schools should receive general education tuition as all schools must provide general education. The payment for special education should be clearly defined in these rules as excess costs or special education tuition. There is inherent inconsistency in schools which meet education quality standards and all the rest of the schools which do not meet those standards. There is inconsistency between statute rule and practice. There is no way for the state as a whole to manage special education costs without a breakout and identification of those costs from general education costs. There currently exists four different cost identification mechanisms (none of which use the same</p>

	<p>criteria): rate-setting in schools which only serve IEP/504, CERT rates, excess costs and announced separate special education tuition at independent schools meeting EQS. The move by the legislature to achieve parity in costs per 16 VSA 2973(b)(2)(B)(ii) is not reflected uniformly in these rules. There is no parity or direct-cost ratios for schools which limit enrollment and there should be. The consideration of direct-cost rates in Rule 2232(g) is not available because the proposed rate application elements do not require the appropriate level of detail (and breakdown of expenses/proposed budget) to enable this calculation.</p>
<p>Rule 2232 Rate Approval</p>	<p>The initial rate set for an independent school should be robust and mirror the CERT rate process or the Private Non Medical Institution (PNMI) rate process because of the level of detail required in those existing state-run processes. These 2200 series rules do not distinguish between non-profit and for profit schools. The PNMI rules, at least, limit revenue by for profit business to 5% annually. Excess revenues are recaptured and off-set operating expenses in the following year. Since education is an essential government service, the use of for profit businesses (privatizing an essential government service) the State Board can establish a reasonable cap on profits for schools. These rules do not make any effort to protect the Vermont taxpayer and the education fund from fraud, waste and abuse. These rules should state how much profit is reasonable for a for profit institution to earn from public funds. Use of private entities or contracts with private entities for essential government services should be accompanied by efficiencies/economies and equivalent quality of service. If the service is neither quality or economically advantageous for the state, then it results in a waste of precious resources and prevents Vermont from reaching any standard of affordability.</p> <p>Since there is a lack of disclosure of expenditures required by the proposed rate-setting process, profit/revenues in excess of actual expenses is impossible to determine. The board should establish what level of profit is included in "costs reasonably related to the level of services provided by the school" and a mechanism to recapture revenue in excess of that level.</p>
<p>Rule 2232(d) (1)</p>	<p>The use of broad categories of expenses in a rate application is unhelpful in determining a limited-enrollment independent school's alignment with direct-cost rates because of the necessary break-down in labor costs. For a school to list salaries for all employees in one category, it is impossible to distinguish administration, support, teaching, janitorial, clinical and non-teaching support staff.</p> <p>In order to determine alignment with direct-cost rates, the budget detail has to include costs by position/qualification/service. At a minimum, the budgets submitted by limited-enrollment independent schools should include the level of detail that public school budgets publish to voters.</p> <p>Since taxpayers do not get to vote down limited-enrollment independent school budgets, the oversight must be shouldered by the state. These rules do not provide sufficient detail of expenditures to enable the state to ensure limited public resources are not wasted. The lack of transparency in using broad categories in a rate-application, as set forth in these rules does not enable cost comparison, cost containment (forced efficiencies) and protect from fraud, waste and abuse.</p>
	<p>There are no provisions in these rules requiring accountability. A rate application should be signed under penalty of perjury by the limited enrollment director, owner and board chair to ensure an appropriate level of accountability for proposed budgets.</p>

	There are no provisions in these rules to required reporting of actual expenditures on an annual basis.
Rule 2232 (j)	There are no provisions in these rules to hold schools accountable for inappropriate billing practices. To prohibit a school from exceeding the maximum tuition rate without an enforcement mechanism is hollow. Schools which exceed maximum tuition rates without permission from the Secretary should be required to refund the payments to school districts whose budgets are approved by taxpayers which include payments to independent schools.
	<p>There are no provisions in these rules which distinguish between schools which operate on a school calendar similar to public schools (175 days) and those operating "year round" (220 days). The problem with the lack of distinction is the impact on what is included in "annual tuition." These rules do not account for the existing practice of independent schools charging extended school year (ESY) services outside of annual tuition. Since the max rate process includes ALL expenses divided by capacity, schools which charge districts for ESY services are using staff whose salaries were included in the max rate. This is double billing and these rules do not prohibit this practice.</p> <p>Similarly, these rules do not prohibit an approved limited-enrollment school from charging "consulting fees" on top of tuition. If labor and operational costs are fully paid for using the maximum tuition, any additional charges to a school district for any services (regardless of what they are called) is using tax-payer funding personnel to generate revenue in excess of expenditures (proposed budget). This practice is not prohibited by these rules. If a school receives public revenue from tuition to provide a educational services the school should not be able to "sell" additional services to school districts because there is no separation of budgets and personnel between the "business" and the school. This can only be accomplished at the state level as individual school districts do not have visibility of the "big picture" as total costs are spread over sending districts. Visibility of these practices can only be seen and regulated at the state-level. In simpler terms, one entity should not receive revenue for its total operational and labor costs from public funds and simultaneously operate a business selling services to public schools which are the source of the original public funds using the same staff/building/operations, etc. Those services were already paid for once. In order to have transparency a business budget must be separated from the school budget with separate personnel to protect the taxpayers and the education fund.</p>
Rule 2232(d)	These rules do not define "restricted revenue sources"
Rule 2232(d) (1)	<p>The rules do not specify or provide clarification on operational costs. The opacity leads to dilution of the education fund. Ex. Fees included in tuition rates paid to parent designated agencies which operate schools. This is only visible at the state level during rate setting. The rules permit such fees to be rolled into operational costs without scrutiny for their reasonable relationship to the level of services provided to students served.</p> <p>These rules do not provide guidance or clarification regarding program costs as to what expenditures may be included that are reasonably related to the level of services provided to students served.</p>

<p>Rule 2232(d) (2)</p>	<p>The rule does not provide for appropriate staffing ratios. Neither the Vermont Standards Board for Professional Educators (VSBPE) or the SBE has established appropriate and measurable staffing ratio standards (i.e., case load limits for special educators, case managing and providing specially designed instruction). In order for a school to be able to adequately serve students on IEPs, the amount of FTE's of qualified staff must be directly governed by the services required to be delivered by the school. Staffing ratio standards would have to consider the levels of student need (moderate, intensive needs etc.)</p>
<p>Rule 2229.6 and Rule 2232(d) (1)</p>	<p>All schools receiving public funds must be required to establish and maintain a financial management system which provides for adequate internal control assuring the accuracy of financial data, safeguarding of assets and operational efficiency.</p> <p>In addition, prior to receiving approval to receive public funds, all schools must be required to provide documentation to both sending schools and the state upon request to prove educational services were appropriately delivered. This includes attendance, transcripts, progress reporting, grades, etc., including documentation logs showing the delivery of special education and related services were delivered in accordance with IEPs/504 plans. All schools must be required to maintain student records and upon closure provide for the storage, maintenance and upkeep of those records, especially student transcripts/permanent records.</p>

11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: Public Comment: Rules Series 2200

SBE - Public Comment <SBE.PublicComment@vermont.gov>

Fri 11/5/2021 5:19 PM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>

Cc: Cutler, Judy <Judy.Cutler@vermont.gov>

Hi Oliver and Jennifer,

This public comment was received today.

Very best,

Emily

Emily Simmons

General Counsel

Agency of Education

o) 802-828-1518 | c) 802-595-4775

1 National Life Drive | Davis 5 | Montpelier, VT 05620-2501

From: Sue Ceglowski <sceglowski@vtsba.org>

Sent: Friday, November 05, 2021 11:35 AM

To: SBE - Public Comment <SBE.PublicComment@vermont.gov>

Cc: Sprague, Suzanne <Suzanne.Sprague@vermont.gov>

Subject: Public Comment: Rules Series 2200

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender. Please find attached public comment from the Vermont School Boards Association regarding Rule Series 2200.

Thank you,

Sue Ceglowski, Esq.

Executive Director, Vermont School Boards Association

(802) 223-3580 ext. 113

(802) 275-8666 (cell)

Pronouns: she/her/hers ([why](#)).

The content of this email is offered as a service of the Vermont School Boards Association and does not constitute legal advice. You should always contact an attorney licensed to practice in your jurisdiction regarding any specific legal problem or matter. Information distributed by the Vermont School Boards Association is reviewed by an attorney licensed to practice in Vermont.

10



TO: State Board of Education

FROM: Sue Ceglowski, Executive Director, Vermont School Boards Association

RE: Public Comment: Rule Series 2200 Independent School Program Approval

DATE: November 5, 2021

On November 4, 2021, the Vermont School Boards Association held its annual business meeting. At the meeting, the voting delegates passed the following resolution which addresses independent school program approval. We respectfully request that the State Board take this resolution into account in the Rule 2200 rulemaking process.

Section III, Subsection K Equal and Equitable Opportunities in Any School Receiving Public Funds

WHEREAS: recognizing the imperative value of education in sustaining a democracy, Vermont was one of the earliest states to enshrine a universal education guarantee in its state Constitution, and

WHEREAS: this purpose was first achieved through a network of post-colonial public, private, and religious schools, and

WHEREAS: national and state recognition of equity and equality demands that publicly funded initiatives and institutions be free of all forms of discrimination, and

WHEREAS: since *Brown v. Topeka* (1954), the state and the nation have a long and proud tradition of adopting and non-discriminatory laws, policies and practices, and

WHEREAS: the increasing awareness of discrimination on the basis of ability, socioeconomic status, racial group, school choice or other groups raise anew the issues of equity and equality,

WHEREAS: our work remains undone.

THEREFORE BE IT RESOLVED:

That the Vermont School Boards Association requests the General Assembly guarantee, through law, that all public and independent schools receiving public funds adopt and exercise, equal and equitable opportunities in admissions, programs and practices in order to operate in the state of Vermont, and

That the state invigorate the moribund school approval processes for public and independent schools to assure operational, financial, and educational accountability and excellence.

11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: Public comment on state board rule making in response to Act 173

SBE - Public Comment <SBE.PublicComment@vermont.gov>

Fri 11/5/2021 5:18 PM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>

Cc: Cutler, Judy <Judy.Cutler@vermont.gov>

Hi Oliver and Jennifer,

This public comment was received today.

Very best

Emily

Emily Simmons

General Counsel

Agency of Education

o) 802-828-1518 | c) 802-595-4775

1 National Life Drive | Davis 5 | Montpelier, VT 05620-2501

From: Rebecca Holcombe <rebecca.holcombe@gmail.com>

Sent: Friday, November 05, 2021 12:56 PM

To: SBE - Public Comment <SBE.PublicComment@vermont.gov>

Subject: Public comment on state board rule making in response to Act 173

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Please see attached my public comment on the proposed state board rules

Thank you for your service to the state.

Rebecca Holcombe

11

To: The Vermont State Board of Education
From: Rebecca Holcombe
Date: Nov 5, 2021
Re: Public comment on Rule 2200 series for Act 173 legislative changes

I am writing to offer public comment on proposed changes to the Rule 2200 series for Act 173 legislative changes.

It is both ironic and policy incoherent that even as Vermont (and the administration) work hard to move away from fee-for-service and to a value-based system of care in health care, VT is also moving to expand a weak architecture for fee-for-service for special education in private schools. The experience of health care is that fee-for-service has been more costly and led to worse outcomes for Vermonters by incentivizing expensive and sometimes unnecessary treatments, rather than preventative care.

Beyond the obvious reasons, this is problematic because at the same time as the state proposes to implement a census-based special education model for public school districts, it is doing the opposite for taxpayer funded private schools. Through Act 173, the state is putting public school districts on a budget, incentivizing them to focus on early intervention and prevention, and holding them accountable for the value and outcomes they deliver to students. At the same time, through the fee-for-service model for private schools, the state undermines that effort by leaving taxpayers statewide and public school districts responsible for paying private vendors (private schools) through a model that fragments care, incentivizes billable treatments and is not accountable for outcomes.

In most contracting relationships, the entity contracting for services can use competitive bidding to choose vendors, can specify the terms of a contract, and negotiate on price. Vendors can be required to justify expenses, provide proof of services and required to meet performance standards.

In this contractual relationship, which is defined in state board rules, school districts have very little leverage. School districts pay private vendors (private schools) for services for which:

1. districts are not allowed to negotiate or set prices,
2. districts have limited leverage to ensure services are proactively focused on value and prevention in ways that prevent high billable costs later, after problems have escalated, and
3. districts retain responsibility for the cost of remediation if the private school fails to provide services required by the IEP.

With respect to specialized private schools associated with the state Designated Agencies, districts are not afforded the opportunity to challenge billing in opaque budget categories (e.g. sudden increases in administrative charges or additional contracted services for students for whom they have paid full tuition). And, private schools associated with Designated Agencies are allowed to precipitously raise fees, while providing no justification. In such cases, school budgets may experience significant increases in cost, without commensurate improvements in service or outcomes.

As in health care, not only are many private options more expensive, but paying for special education services this way incentivizes provision of more services and more expensive services regardless of student need. This is particularly true when a partner uses education dollars to draw down a medicaid match. Again, this arrangement may actually lead to worse outcomes for students who would benefit from other services that are more likely to be provided under a lower margin business model, such as census-based budget models. For example, students who receive SLP services individually under a fee-for-service model, might receive them in social, evidence-supported (and less expensive) group settings in a value-based contest. And, instead of applying more one-to-one aides to children with challenging behaviors, a practice that is widespread and often associated with worse outcomes, schools in a value-based model might be incentivized to rely on other interventions with a more robust research base.

Given that fixing this incoherence may be a job that needs to be addressed by the legislature, the state board here can best serve the state, students and taxpayers statewide by addressing known risks of fee-for-service models, including:

1. the incentive to increase service volume and high margin (expensive) services,
2. the risk to taxpayer and districts of lack of transparency and accountability for vendors,
3. the tendency of vendors to prioritize more costly, defensive treatments after problems arise rather than early (less lucrative) intervention to prevent problems from arising and escalating out of control,
4. the challenge of managing a coherent system of care, and
5. the incentive for vendors to select clients/students that fit their business model at the expense of the equitable functioning of the system overall.

Private schools in Vermont are under no obligation to enroll students with disabilities, and they are not required to enroll taxpayer-funded students. However, if they choose to depend on public dollars and taxpayer-funded students, they are choosing to be a vendor of a public good, and should be accountable to the interests of Vermonters statewide, and not just the interests of the vendor's enrolled students and trustees.

In this memo, I will provide examples related to two of the risks inadequately addressed in this rulemaking process: **inequitable access** to publicly-funded services due to vendor (private school) enrollment practices in this market, and the resulting impact on the equitable function of VT's investment in publicly-funded education, and 2) **fee-for-service and the related risks posed by lack of transparency and accountability** for the use of taxpayer funds by vendors (private schools) in this sector. I will address these issues separately.

1. Equitable access:

The Problem:

The current rules draft undermines inclusive intent by preserving the requirement that any student with disabilities meet other enrollment criteria, so long as the "student meets the **other requirements of the school's enrollment policies.**" So long as these students are not allowed to

enroll in a taxpayer-funded school because of criteria set by the school, **this is not a system of school choice, but a taxpayer-funded system of private schools that choose which students to serve.**

Proposed solution: Adopt equitable enrollment policies. I recommend that at a minimum, you consult the state of CA's requirements for enrollment in charter schools in CA, and use these as a model.

If a school is funded by taxpayers, during the enrollment process, the only information the taxpayer funded school should be able to request is the name of the student and contact information. Once the student has been enrolled, the private school can request records, including information related to economic status and disability status, and can work with the LEA on the placement. This practice is not without precedent. For example, the California Charter Schools Act states that: "A charter school shall admit all pupils who wish to attend the charter school" up to the school's operational capacity.¹ I encourage the state board to consult this [brief](#) by School and Colleges Legal Services in California, which explains CA's more equitable admissions process for taxpayer-funded schools:

<https://sclscal.org/authorizers-role-in-ensuring-charter-school-admissions-and-enrollment-processes-and-procedures-are-legally-compliant-k-12/>

Rationale:

Currently, private schools that are taxpayer-funded have no obligation to equitably enroll students. In fact, many have enrollment policies that steer students towards other schools. This has the effect of de facto segregation of those other schools.

Here are a few examples of how taxpayer-funded private schools currently slant their enrollment, including in ways that will disproportionately sort students with disabilities away from many private schools. These policies direct students with disabilities back to more inclusive schools, primarily public schools. In the end, such practices don't need to be overtly discriminatory to be segregating in impact.

1. **Fees.** Many schools require fees beyond tuition for enrollment. In VT, where disability status is correlated with family economics, this criteria may disproportionately discourage enrollment of students with disabilities. Students who are economically disadvantaged may be deterred from even applying to some private schools because of extensive fees that are not covered by the tuition voucher. For example, on its website, MSJ states that families that enroll students are responsible for paying additional fees that add up to about \$1,500 per child. Parents with means have the option of "buying" their way out of a \$500 dollar fundraising obligation. Families pay an application fee, even though the school sent voucher

¹ California Education Code § 47605(d)(2)(A) (as amended Oct. 13, 2017)

districts invoices for about \$600 more than the school's own stated cost per pupil cost of education (e.g. turning a profit on voucher-funded students). Simply posting a fee schedule like the one below is a deterrent to some families, because it communicates an implicit message about what the school expects of wealthy and less wealthy families.

- **New Student Registration/Enrollment Fees:** \$125.00 per student, not to exceed \$250.00 per family.
- **Re-enrollment for existing students:** \$25.00 Early Registration Fee (before April 15, 2021, \$125.00 after April 15, 2021.
- **Technology Fee:** \$50.00
- **Lab Fee:** \$75.00
- **Family Fundraising Obligation:** \$650.00 (\$0 if full participation) opt out for \$600.00
- **All Families are expected to fully participate in the (3) Fundraisers throughout the year.** Once your family fundraising obligation is fulfilled, any additional money raised will be credited to your owed tuition only.
- **Textbooks:** \$300.00**

Additional Financial Considerations For New Students:
Approximate Cost of School Uniforms: \$250.00**

*There are additional fees for international and non-local students.

**This is an estimated cost for textbooks. Actual costs may be significantly lower or a bit higher.

If you have any questions about scheduling tuition payments, please contact Denise Watson via email at dwatson@vermontcatholic.org

In Vermont, people with disabilities are overrepresented in the population of people living in poverty, and people who live in poverty are more likely to have disabilities. Enrollment practices that discourage or make less wealthy families feel less welcome are also likely to disproportionately affect people with disabilities.

2. **(Not so) subtle steering.** Many non-public schools inquire about disability status as part of the application before students are admitted. In some states, charter schools are not allowed to ask about disability status until after students are enrolled, precisely to prevent steering or discouragement based on disability status. This is important: existing research on special education applicants and charter schools found they are less likely to return application queries from parents with students with significant disabilities.² Since taxpayer-funded private schools in Vermont have even fewer public obligations than charter schools, it is plausible the empirical pattern of lack of responsiveness to families of children with significant disabilities occurs here.
3. **Capping of enrollment of students with disabilities.** When some schools are inclusive of students with disabilities, whether public or private, and other nearby schools are not, tuition

2

<https://www.edweek.org/leadership/charter-schools-more-likely-to-ignore-special-education-applicants-study-finds/2018/12>

schemes can concentrate students with disabilities in schools that are more welcoming. For example, Thetford Academy and Lyndon Institute serve a disproportionate number of students with disabilities in their market region. In 2017, the headmaster of Lyndon Institute wrote that because of increasing numbers of students with disabilities trying to enroll, her school would limit enrollment of students with disabilities who do not meet other acceptance requirements (a condition preserved in the proposed rules) and wrote: *“In order for a student to be transitioned to LI [Lyndon Institute] prior to the end of their 8th grade year, they must first be accepted.”*³ Where do students who are turned away go to school?

This freedom to decide who to accept persists in the draft rules:

2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School

1) The student or the student’s parent shall voluntarily request the enrollment.

a) In this subsection, to “enroll” a student means that an approved independent school will offer a position in the school to a student, provided that the provisions of this subsection relating to LEA responsibilities are met and the student meets the other requirements of the school’s enrollment policies.

b) A school shall enroll all publicly funded students on a first come first served basis until capacity is reached. The student or the student’s parent shall voluntarily request the enrollment.

3. **Messaging:** Even without active exclusion, programs can discourage students with disabilities from applying through how they communicate about their program and about students with disabilities. For example, in a 2021 article in VTDigger, Christy Bahrenburg, director of advancement and communications for Rice Memorial High School, a parochial school in Burlington, told a reporter that Rice, “as a largely college preparatory-oriented school, does not offer any disability programming.”⁴ Implicit in this statement is the erroneous implication that having a disability is inconsistent with a college-preparatory program, and that the school’s program is therefore not appropriate for students with disabilities. Messaging like this can deter students with disabilities from applying, which means they are likely to systematically “choose” public or more inclusive private schools instead, a form of segregation by “choice.”
4. **Requiring test scores as part of the application and reviewing them for enrollment purposes:** When schools select for enrollment based on measures like standardized test scores, on which students with disabilities VT score lower on average, they disproportionately suppress enrollment of students with disabilities. For example, in 2018, the mean score on the SB ELA test for students with disabilities was 2460, but was 2598 for students without disabilities.

³

https://education.vermont.gov/sites/aoe/files/documents/edu-approved-independent-school-committee-additional-material_0.pdf

⁴ <https://vtdigger.org/2021/07/05/driven-by-covid-more-students-left-burlington-high-than-arrived-in-2020-21/>

State of Vermont	Disability	No Special Ed	SB English Language Arts Grade 08	4925	2598.0
State of Vermont	Disability	Special Ed	SB English Language Arts Grade 08	904	2460.0

It's worth noting that some 50 percent of score variance in scores is explained by family wealth, gender and race, so when schools use test scores to select students, they will tend to skew their enrollment on those measures as well.⁵ Even asking for these scores can discourage some candidates from applying.

5. **Requesting discipline records.** Many non-public schools in VT also request information related to academic or discipline problems during the application process. In general, students with disabilities (and students who are economically disadvantaged) experience the greatest disproportionality in discipline in VT.⁶

School Year	Total	Not Eligible for 504		Eligible for 504	
	Enrollment	Enrollment	Percent of Enrollment	Enrollment	Percent of Enrollment
2013	79,801	76,372	95.7%	3,429	4.3%
2014	78,867	75,281	95.5%	3,586	4.6%
2015	77,763	74,227	95.5%	3,536	4.6%
2013-2015	236,431	225,880	95.5%	10,551	4.5%
	Exclusions	Exclusions	Percent of Students Excluded	Excluded	Percent of Students Excluded
2013	4,589	4,188	91.3%	401	8.7%
2014	4,246	3,849	90.7%	397	9.3%
2015	3,726	3,416	91.7%	310	8.3%
2013-2015	12,561	11,453	91.2%	1,108	8.8%
	Comparison of Excluded Students	Proportional Difference in representation between general and excluded population: (percent of Exclusions/percent of Enrollment)			
2013		95.4%	Neutral	202.3%	Large Overrepresentation
2014		95.0%	Neutral	204.4%	Large Overrepresentation
2015		96.1%	Neutral	182.4%	Large Overrepresentation
2013-2015		95.4%	Neutral	197.3%	Large Overrepresentation

⁵ <https://pubmed.ncbi.nlm.nih.gov/26752444/>

⁶ <https://education.vermont.gov/sites/aoe/files/documents/edu-legislative-report-exclusionary-discipline-response.pdf>

Table 9 - Excluded Student Population Data by IEP Status Students Experiencing at Least One Exclusionary Action, School Years 2013-2015					
School Year	Total	Not Active IEP		Active IEP	
	Enrollment	Enrollment	Percent of Enrollment	Enrollment	Percent of Enrollment
2013	79,801	65,916	82.6%	12,025	15.1%
2014	78,867	64,876	82.3%	12,110	15.4%
2015	77,763	63,681	81.9%	12,176	15.7%
2013-2015	236,431	194,473	82.3%	36,311	15.4%
	Exclusions	Exclusions	Percent of Students Excluded	Excluded	Percent of Students Excluded
2013	4,589	3,209	69.9%	1,380	30.0%
2014	4,246	2,966	69.9%	1,280	30.0%
2015	3,726	2,476	66.5%	1,250	33.5%
2013-2015	12,561	8,651	68.9%	3,910	31.0%
		Proportional Difference in representation between general and excluded population: (percent of Exclusions/percent of Enrollment)			
2013	Comparison of Excluded Students	84.7%	Slight Underrepresentation	199.1%	Large Overrepresentation
2014		84.9%	Slight Underrepresentation	195.4%	Large Overrepresentation
2015		81.2%	Slight Underrepresentation	213.9%	Large Overrepresentation
2013-2015		83.7%	Slight Underrepresentation	201.9%	Large Overrepresentation

Simply asking for these records can deter applications from students with these records, who are disproportionately likely to be students with disabilities.

Has this student had academic or discipline problems in school? Yes _____ No _____ If yes, please explain: _____

- Dismissal of students based on student behavior:** Private schools can reserve the unilateral discretion to dismiss (or suggest parents withdraw) students, as captured in this Long Trail School policy:

Dismissal/Withdrawal: Dismissal of a student is at the discretion of the Head of School. At the Head of School's discretion, parents may be offered the option of withdrawing their child. If a student is dismissed or withdraws because of circumstances surrounding a discipline case, s/he may not return to campus until the following school year, unless permitted by the Head of School. Dismissal or required withdrawal will be noted on the student's official LTS transcript.

Grounds for dismissal are not spelled out. So long as no reason is given, or the reason given is not the child's disability, there is no remedy. And, any loss of service for a student on an IEP is the responsibility (and liability) of the sending district, and not the private school.

- 7. Dismissal of students based on behavior of parents:** A private school can reserve the right to disenroll a taxpayer funded student, including a student with disabilities, based on unilateral discretion as to whether a parent's behavior is acceptable. For example, the Long Trail School recently added language to its handbook reserving the right to unenroll families if parental behavior was deemed unacceptable (see language in green below).⁷ A sending voucher district is responsible for any loss of services to a child with a disability if the child is unenrolled due to parental behavior.

Any parent who acts unacceptably (e.g., untruthful or misleading on health or safety, uncivil or disrespectful, harassing, threatening, or causing disruption to the professional or academic climate) towards any faculty, staff, or student may be banned from the school grounds and/or school activities. In addition, such behavior may constitute grounds for the unenrollment of the family. LTS in its discretion will determine if and when this consequence is appropriate.

- 8. Religious requirements and statements of faith** that must be signed as part of the application process can also separate students from taxpayer-funded services. For example, Grace Christian School asks applicants where they go to church, and requires applicants to sign a statement of religious faith to enroll, which includes statements like "We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complimentary genders together reflect the image and nature of God. (Gen. 1:26-27)." This pledge is likely to discourage enrollment by members of other faiths, and by anyone who disagrees with the school's beliefs related to LGBTQ people, including students with disabilities. Yet, according to the VDH, people who are LGBTQ are disproportionately likely to also have a disability.⁸ Title IX prohibits sexual harassment, failure to provide equal athletic opportunities, sex-based discrimination in courses and programs, and discrimination based upon pregnancy or parenting. However, Title IX doesn't apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization, as is the case in some approved religious schools.
- 9. Exclusion of students eligible for 504 plans:** While the focus of rulemaking has been on how private schools will be compensated for services for students with disabilities, students with physical and mental disabilities also have a right to access to quality education, even though their particular disabilities are not covered by special education. These students'

7

https://www.benningtonbanner.com/local-news/long-trail-school-board-of-trustees-resignation-letter-made-public-all-eges-bullying-tactics/article_3ffb281e-2886-11ec-8bfa-1b32c922153d.html

8

<https://www.healthvermont.gov/sites/default/files/documents/pdf/HSVR-BRFSS-2019-DisabilityDemographics-Dat aBrief.pdf>

rights are protected by section 504 of the Americans with Disabilities Act, and all schools that receive federal funding, including related to school meals, are required to provide reasonable access to these students, including providing accommodations to support their access. Public schools do not receive special education funding for these students, and are incentivized to work proactively to provide access and prevent compounding challenges. In theory, federal regulations prohibit private schools from excluding students with disabilities for whom they are able to provide an appropriate education with “minor adjustments”. But how this works in practice needs to be monitored, and can be dependent on the skill and robustness of the private school. To the extent that a private school unilaterally decides it cannot serve a child who may be eligible for services under section 504, this responsibility is shifted into other schools. (See email exchange in Appendix A.) For example, when St. Francis Xavier unenrolls a child, where does that child go? What is the impact on neighboring programs of this school's “inability” to provide access to education for a student with more challenging needs? To the extent that the state fails to track and address this kind of sorting “out” of some taxpayer-funded private settings, with commensurate concentration of need in more inclusive settings, the state is potentially funding segregation, in violation of the intent of Act 173.

B. Transparency and Accountability

The Problem:

The second major risk embedded in the rules is the risk to taxpayers posed by lack of accountability and transparency of private schools, including schools that specialize in serving students with disabilities. For just one recent example, in an internal October 2021 memo (see Appendix B), J. Deborah Ormsbee, Independent School Program Coordinator at the AOE, wrote to her supervisors: “I am unable to appropriately process and set tuition rates for approved independent schools associated with designated agencies.” She explained:

“Requests for clarification and accompanying support documentation, by AOE staff responsible for rate setting, have not been addressed sufficiently, or at all, by most designated agency finance divisions, during rate setting cycles, FY20 – FY22.

Many designated agency schools refuse to complete annual time studies, to determine the actual percentage of time any designated agency employee devotes, to a school (in some cases multiple schools) to determine appropriate FTE salaries, corresponding benefits and to determine correct percentage of agency fees, per school program, to ensure compliance with State Board threshold, per expenditure as “reasonably related to the cost of the academic program.” (Emphasis added.)

What do fee trends associated with opaque budget categories look like in practice? For one example, the Baird school, which has fewer than 11 students, charged no fees in FY20, but requested agency fees of \$216,069 in FY22, with no justification.

This is but one example of the challenge of protecting the taxpayer interest in knowing that special education funds are only used for allowable purposes. Under the rules, as Ormsbee

documents in her letter (Appendix B), the AOE is not able to determine if fees are reasonable, and if billed costs are driven by allowable expenses.

The rules must ensure greater transparency and accountability for schools that are taxpayer-funded, and greater regulatory oversight to assure that Education Fund dollars are only used for approved educational purposes. The agency needs to be able to compel reporting that it needs to meet its statutory obligations with respect to oversight. And, it needs the capacity to withhold funding in cases where expenses cannot be substantiated. As Ormsbee noted:

“The proposed tuition rate setting section of draft rules, will further restrict agency tuition rate oversight, under “role-up” category language, and reduce even further appropriate AOE leverage for obtaining clarity on tuition rate costs. Proposed Rules also strictly proscribes the types of document requests the agency may submit to any independent school applying for a tuition rate. The opacity of draft rules will significantly inhibit the ability of responsible AOE personnel from tuition rate setting and program oversight with fidelity, for purposes of setting a fair rate, cost containment and appropriate relegation of costs to IDEA, gen ed fund or treatment costs through Department of Mental Health CERT rate processes.”

Currently, Private Nonmedical Institutions for Residential Child Care (PNMI) and Department of Mental Health CERT procedures are quite robust. They offer a stark contrast to the weak oversight provided in the state board’s proposed rules for taxpayer-funded private schools. As a result, if there is cost shifting or excess billing, it will be to the Education Fund and to the less well protected education taxpayers.

Proposed solution: For special education services purchased from private schools, adopt rules that are comparable to the robust rate-setting standards and procedures used for setting rates for Private Nonmedical Institutions for Residential Child Care (PNMI) and Department of Mental Health CERT programs.

Rationale:

While many private partners do an excellent job of serving some of the state’s most vulnerable children, this is not always the case. In my time at the Agency, we were aware of group-delivered services being billed at the higher rate for individual services, of unsubstantiated overhead and administrative billing, and of the agency's inability, given lack of transparency, to evaluate off-setting revenues to ensure non-duplication of payments. While the agency could, and did, withhold payment to school districts until they had resolved problems related to financial controls and appropriate uses of public dollars, the agency has no similar robust authority to compel private schools to substantiate costs and prove that expenses are allowable.

I have referenced Ormsbee’s memo and circumstances specific to specialized schools for students with disabilities, but it is worth mentioning that this lack of transparency is a systemic issue. Across the education fund and all districts, lack of transparency adds risk to expenditures in voucher districts. While public school budgets are put together by democratically-elected boards, published, and then approved (or rejected) by voters, independent schools have few transparency obligations and thus present a different set of risks to the state.

Districts are required to use competitive bidding processes for contracts and subject to regulations related to conflicts of interests. In contrast, Vermont currently has few safeguards to ensure that independent schools use taxpayer dollars for students instead of private benefit. The lack of transparency makes it easier to hide excessive administrative costs and makes fraud and abuse much harder to detect.

Consider what is currently permissible in Vermont's taxpayer-funded private schools and their sending districts, all of which could be considered problematic:

- A private school associated with a Designated Agency (e.g. can refuse to complete annual time studies, to determine the actual percentage of time any designated agency employee devotes, to a school (in some cases multiple schools) to determine appropriate FTE salaries, corresponding benefits and to determine correct percentage of agency fees, per school program, to ensure compliance with State Board threshold, per expenditure as "reasonably related to the cost of the academic program." (See attached letter from Ms. Ormsbee at the AOE)
- A program that serves under 11 children that charged no fees in addition to tuition in FY20 can request \$216,069 in opaque fees in FY22, and refuse requests for information that would justify the fee change. (See attached letter from Ms. Ormsbee at the AOE, referenced above.)
- A board chair in a public school district can also be the director of a private school that receives the lion's share of its funding from the district in which he or she is the board chair.
- A private school headmaster and trustees can set up a separate development corporation which compensates them as directors. Those same individuals, in their school administrator roles, can invest tuition dollars paid by the state [taxpayers] into the development corporation, which they oversee in their development corporation roles, where they can be used for non education purposes (e.g. investing in a wood chip business, for example). These public dollars can also be used to develop goods or services (e.g., real estate or curriculum) which the corporation can then sell or rent back to a taxpayer-funded school. The development corporation can compensate the school headmaster and board members in their roles as directors or trustees of the development corporation. See this link for an analysis by Dr. Preston Green of the risks and potential for self-dealing associated with this kind of related-party transaction⁹.
- A person with a special education credential could set up a school for students with disabilities in his home, extensively renovate the home, put in a therapeutic pool, charge districts that place students there for the full cost of the renovation through tuition bills, then close the school with no obligation to repay the renovation expenses. There is no mechanism in the current rules for recapturing that cost to the taxpayers.

⁹ <https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1080&context=alr>

Our children and our education fund are our public trust. You have been appointed to regulate a system of education that represents almost 80,000 kids and elected school boards across the state. You are custodians of the equity of this system, as well as the fiscal integrity of this system

Thank you for considering better protections both for students and for taxpayers as you engage in rulemaking.

Appendix A: Communications between AOE and St. Francis Xavier regarding the exclusion of a student likely to be eligible for a 504 plan

(In Fri, Jul 16, 2021 at 9:11 AM (Ormsbee, Deborah) <Deborah.Ormsbee@vermont.gov> wrote.

Good Afternoon Mr. Hill,

It was recently brought to my attention that a parent of a student, enrolled at St. Francis Xavier who may be entitled to a 504 plan, was notified their child has been refused accommodations for his/her disability by your school. Specifically, the parent shared that refusal of accommodations for the disability was predicated by St. Francis School on the belief that 504 requirements do not pertain to their independent school's program.

After seeking guidance from the AOE's legal division, and a lengthy review of any school's responsibility, the issue as to the applicability of Section 504 to St. Francis is a matter of the school's status as a recipient of federal funds from the US Dept. of Education, St. Francis is still prohibited from discriminating against a student with a disability by Vermont law.

Therefore, to assist your school's administration to better understand the legal requirements for students with disabilities, I have inserted Vermont statutory requirements, expected of all schools in the state *including independent schools*, to ensure compliance with ADA education requirements and state law prohibitions on discrimination.

1. Students with disabilities fall under programming, guidance and protection of the Federal Americans with Disabilities Act, which is very broad in its application. These students are not IEP students. However, there may be overlap with IDEA for some students with disabilities which are eligible for special education under IDEA but this issue will not be addressed in this email. Vermont law also specifically addresses expectations and requirements of both public and independent schools regarding access to education for all students with disabilities.

2. §54501 Vermont Public Accommodations Law Defined:

1. "Place of public accommodation" means any school, restaurant, store, establishment, or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.
2. "Disability", with respect to an individual, means:
 - a. A physical or mental impairment which limits one or more major life activities
 - b. A history or record of such an impairment or
 - c. Being regarded as having such an impairment

3. §54501 Public Accommodations

3. A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
(Source: Vermont Education Lawbook, Vermont School Boards Association, 2020 edition)

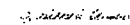
The Agency of Education's 504 Handbook includes, in the introduction, a clear delineation between Federal ADA requirements and educational requirements for *all schools*- public and independent.

"Section 504 prohibits discrimination on the basis of disability which is defined in the Rehabilitation Act as a failure to provide students with disabilities the same opportunity to benefit from educational programs, services, or activities as provided to their nondisabled peers. This means that districts/schools must make programs and activities accessible as well as the buildings and grounds. As a civil rights statute, Section 504 focuses on ensuring a level of access to educational services (including both academic and extra-curricular activities) that is equal to the level of access provided to non-disabled students. This includes providing eligible students who have a physical or mental disability with a free appropriate public education (FAPE)."

(To access Agency of Education 504 Handbook go to: <https://education.vermont.gov/sites/aoe/files/documents/edu-special-education-504-guide.pdf>)

I hope clarification of these legal obligations of non-discrimination will assist St. Francis Xavier's staff with ensuring enrolled and future students are educationally protected in accessing their educational rights under The Americans with Disabilities Act and Vermont law. If staff at St. Francis Xavier require any additional information or assistance with meeting student requirements for non-discrimination on the basis of disability or would like to request educational resources, please contact me.

Best Regards,



J. Deborah Ormsbee
Independent School Program Coordinator II
Agency of Education
National Life Drive, Davis 5
Montpelier, VT 05602
802-828-1226
deborah.ormsbee@vermont.gov

From: Craig Hill <chill@sfxvt.org>
Sent: Tuesday, July 20, 2021 7:57 AM
To: Ormsbee, Deborah <Deborah.Ormsbee@vermont.gov>
Cc: Robin McCormick <robinmccormick@sfxvt.org>; Joanna Gearan <jgearan@vermontcatholic.org>
Subject: Re: Student 504 Plans & Independent School Requirements

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Deb,

Thank you for your email regarding our school's obligations under Section 504. You indicate in your note "that a parent of a student, enrolled at St. Francis Xavier who may be entitled to a 504 plan, was notified their child has been refused accommodations for his/her disability by your school."

While you do not mention the specific child or family, I am presuming I know the family to which you refer and I will respond based on that presumption. I will not identify the child or family by name on the off chance that perhaps you are referring to some other student of whom I am unaware.

The child in question does not have a physical disability, but rather has issues involving social, emotional, and behavioral matters. Our teachers, staff members, and administrators have worked continuously over the past four years to provide an environment and support system that would allow this student to succeed in the classroom. Sadly, these efforts proved unsuccessful as this student requires much more intensive help than we can provide.

The introduction of the state handbook on Section 504 states the following:

Schools receiving federal funds, directly or indirectly, are individually responsible for compliance with Section 504. Federal regulations prohibit recipient independent schools from excluding students with disabilities for whom they are able to provide an appropriate education with "minor adjustments." (emphasis added)

As you know, the following are not considered "minor adjustments", however, would be necessary in order for this student to remain enrolled at Saint Francis Xavier: hiring additional personnel to work with the disabled student only, dealing with persistent disruption of classes resulting in other students' learning being hindered, and taking significant time away from the teacher's, principal's, student advocate's, and school health coordinator's regular responsibilities.

Saint Francis Xavier School is not an appropriate school for the student in question because we do not have the tools to meet this student's needs and we do not receive public funding to provide those services. No accommodations were denied to this student as your message suggests. The reality is that this student requires more than Saint Francis Xavier has the ability to provide. We are a private, Catholic school with very limited resources. We have gone above and beyond to fulfill any duty we had to the student in question. Our teachers and staff hope and pray the student's family will find an educational environment in which the student can thrive. It is clear that Saint Francis Xavier School is not that place.

Best,

Mr. Craig Hill
Principal
Saint Francis Xavier
chill@sfxvt.org
www.sfxvt.org



On Tue, Jul 20, 2021 at 8:42 AM Ormsbee, Deborah <Deborah.Ormsbee@vermont.gov> wrote:

Good Morning Mr. Hill,

Although it may seem like splitting hairs, language in regards to legal requirements for providing access to education matters. St. Francis will need to clarify with the parent the language used by your school in "denying" Section 504 student support services.

St. Francis School's inability to provide services for this particular student, as described in your follow-up email, is much different than stating that Federal Section 504 and Vermont's public accommodations laws do not apply to St. Francis; which is incorrect.

I encourage St. Francis School's administrators to proactively contact the AOE's legal team with questions regarding independent school requirements in serving future student populations that fall within any protected category identified by the Americans with Disabilities Act. The AOE's website, in particular the special education pages, provide applicable information for all schools in Vermont (public and independent) on matters relating to IEP and Section 504 students.

You may access these free resources and legal educational requirements by going to these resources:

<https://education.vermont.gov/sites/aoe/files/documents/edu-series-2360-special-education-rules.pdf>

<https://education.vermont.gov/student-support/vermont-special-education/resources-for-special-educators-and-administrators>

Please do not hesitate to contact me with any additional questions or concerns you may have.

Regards,

Deborah Ormsbee

J. Deborah Ormsbee
Independent School Program Coordinator II
Agency of Education
National Life Drive, Davis 5
Montpelier, VT 05602
802-828-1226
deborah.ormsbee@vermont.gov

? Craig Hill <chill@sfxvt.org>
to Ormsbee, Deborah

Tue, Jul 20, 3:44 PM

! You are viewing an attached message. Gmail can't verify the authenticity of attached messages.

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Greetings Deb,

Thank you for your attention to this matter and for the follow up email to me.

As an FYI, we have already conveyed this to the family as the family opted to have their attorney contact us. We have provided the attorney with the same information we provided to you. Namely that we did not deny the student accommodations. We provided the student the accommodations we are able to provide and that the student's needs exceed what our school is able to offer.

Best,

Mr. Craig Hill
Principal
Saint Francis Xavier
chill@sfxvt.org
www.sfxvt.org



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Appendix B: Internal AOE communication explaining why the AOE staff person in charge of rate setting does not believe she can do her job, given lack of transparency and accountability, and providing specific examples.



1 National Life Drive, Davis 5, Montpelier, VT 05620-2501
(p) 802-828-1130 | (f) 802-828-6430 | education.vermont.gov

MEMORANDUM

TO: Patrick Halladay, Director & Josh Squijers, Assistant Director
Education Quality Division
FROM: J. Deborah Ormsbee, Independent School Program Coordinator, II
SUBJECT: Designated Agency Fees & Collaborative DMH CERT RATE setting Concerns
DATE: October 14, 2021

Work Supervision Request

I am unable to appropriately process and set tuition rates for approved independent schools associated with designated agencies. Designated agency school applications submitted in FY22 are reflective of ongoing programming concerns on administrative agency fees as part of the tuition rate setting process for CERT rate schools.

Designated agency tuition rate applications do not meet current SBE Rules on allowability or align with agency of education policies regarding transparency of expenditures related to designated agency administration costs. As a result of increasing tuition rate setting pressures, I am requesting supervision assistance from leadership to:

- provide guidance regarding the current level of authority AOE rate setting personnel have for requesting clarity of designated agency fees as submitted in tuition rate applications, as well as process steps for non-compliance by an applicant for FY22 and subsequent rate setting cycles
- provide guidance regarding issue of opaque designated agency fees including program allocations, building allocations, program infrastructure fees, and in-direct administration costs
- assistance under proper authorization, establishing an internal system of rate setting under new Independent School Rule Series 2200, expected to be implemented FY23, regarding designated agency fees and in general- opaque cost categories that include supplies, equipment, contracted services, travel, staffing, benefits, operational costs, and requirement to include all off-setting revenues to ensure non-duplication of payments.

Context:

Contact Information:

If you have questions about this document or would like additional information, please contact:

J. Deborah Ormsbee, Independent School Program Coordinator, II deborah.ormsbee@vermont.gov

Prior to 2019, the Agency of Education and Department of Mental Health set CERT rate and tuition rates for approved special education independent schools, associated with a designated agency, using separate applications. Designated agency schools often applied for annual CERT rates before submitting a tuition rate application, resulting in artificial inflation of education tuition.

Prior to 2019, program costs not allowable under Department of Mental Health CERT application processes were, by default, passed onto and included in Agency of Education tuition rate calculations, due to schools having already received an official CERT rate letter from Department of Mental Health.

In March 2019 a process was developed between DMH and AOE to streamline and ensure that treatment and education costs would be correctly apportioned, per application for: staffing, benefits, operational expenses, and other program cost expenditures.

The new collaborative rate process was implemented FY20. All designated agency schools were provided with instructions, tech assistance by both agencies, as needed, and an application. Members of rate setting committees in both sister agencies, review CERT/Tuition rate application processes annually.

On-going Problems of Practice:

By FY21 designated agency fees included in rate applications began to exceed allowability thresholds established by State Board Rule Series 2200 and AOE policies for education portion of the collaborative DMH CERT application. Costs began to shift from academic programming, general and special ed, to administrative, operational, and designated agency fees. Inclusion of new expenditures inserted in FY21 and FY22 applications include opaque definitions, such as: building allocation, program infrastructure, program allocation costs, as well as several varieties of in-direct administration agency fees not previously included. To illustrate this practice, several FY22 Washington County Mental Health tuition applications do not allocate any funding for either prerequisite general education, or special education academic programming in school budgets beyond FTEs. Significant program increases are relegated to two cost categories: staffing and administrative agency fees. For example, the FY22 tuition rate application for the Individual Program at WCMHS, includes a requested tuition rate for non-Medicaid eligible students in the amount of \$193,000.00, FY22. The official tuition rate set by the AOE for special ed and general ed students for the IPS program, FY21, was \$59,868.40.

Requests for clarification and accompanying support documentation, by AOE staff responsible for rate setting, have not been addressed sufficiently, or at all, by most designated agency finance divisions, during rate setting cycles, FY20 – FY22.

Many designated agency schools refuse to complete annual time studies, to determine the actual percentage of time any designated agency employee devotes, to a school (in some cases multiple schools) to determine appropriate FTE salaries, corresponding benefits and to determine correct percentage of agency fees, per school program, to ensure compliance with State Board threshold, per expenditure as "reasonably related to the cost of the academic program."

Currently, the Laraway School and East Valley Academy are the only designated agency schools that annually provide imbedded time-study data to ensure appropriately apportioned FTEs and corresponding benefits between treatment and education costs. Laraway is the only designated agency school that does not include agency fees, of any kind, or any other administrative costs, as part of the school's annual tuition rate application.

East Valley Academy is associated with The Clara Martin Center in Randolph and underwent CERT rate approval process through The Department of Mental Health, FY20. Both of EVA's CERT/Tuition rate applications included properly apportioned FTEs, benefits, and other program costs were equally transparent. The designated agency's administrative fees are a new addition to the EVA's tuition rate application; however, due to proper apportionment of staffing, fees do not currently necessitate additional

scrutiny or raise concerns. The following three year data charts are reflective of agency fee trends, per designated agency, and fees are listed as either verified or unverified expenditures- meaning, requests for clarification by the AOE have not been met during tuition rate cycles, FY20 – FY22.

Data: High Level of Concern School Programs (Note: fees are aggregate of all administrative program fees included in rate applications: administrative, program infrastructure, program allocation, agency allocation and building allocation fees)

Designated Agency	Independent School Program	FY20 Agency Fees & # students served	FY21 Agency Fees & # of students served	FY22 Agency Fees & # of students served
Howard Center	Baird Regular Day Program	Students: 43 \$868,874.00	Students: 44 \$257,844.00	Students: 42 \$242,977.00
Howard Center	Baird Intensive Rate- *not currently an approved program -action for this program is intended to be additive to regular day tuition	Students: ** No fees charged FY20	Students: ** \$129,602.00	Students: ** \$216,069.00
Howard Center	Jean Garvin School	Students: 27 \$219,504.00	Students: 27 \$133,660.00	Students: 27 \$204,735.00
NFI (Northeastern Family Institute)	Arlington School	Students: 40 \$73,423.20	Students: 40 \$170,427.00	Students: 40 \$130,833.78
NFI	Cornerstone School	Students: 40 \$130,455.00	Students: 40 \$149,499.00	Students: 40 \$152,007.94
NFI	East Meadows	Students: 18 \$65,131.00	Students: 18 \$103,686.00	Students: 18 \$109,891.00
NFI	Turning Points School	Students: 27 110,423.51	No rate request application submitted	Students: 27 \$180,819.00
WCMHS (Washington County Mental Health Services)	Choice High School	Students: 30 \$98,774.00	Students: 30 \$115,580.00	Students: 30 \$219,927.00
WCMHS	Choice Middle School	Students: 16 \$49,834.35	Students: 16 \$57,573.00	Students: 16 \$140,666.00
WCMHS	Beckley Day Program	Students: 12 \$69,942.00	Students: 12 \$69,942.00	Students: 12 \$76,295.00

scrutiny or raise concerns. The following three year data charts are reflective of agency fee trends, per designated agency, and fees are listed as either verified or unverified expenditures- meaning, requests for clarification by the AOE have not been met during tuition rate cycles, FY20 – FY22.

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Howard Center	Baird Intensive Rate- *not currently an approved program -tuition for this program is intended to be additive to regular day tuition	Students: ** No fees charged FY20	Students: ** \$129,602.00	Students: ** \$216,069.00
Howard Center	Jean Garvin School	Students: 27 \$219,504.00	Students: 27 \$133,660.00	Students: 27 \$204,735.00
NFI (Northeastern Family Institute)	Arlington School	Students: 40 \$73,423.20	Students: 40 \$170,427.00	Students: 40 \$130,833.78
NFI	Cornerstone School	Students: 40 \$130,455.00	Students: 40 \$149,499.00	Students: 40 \$152,007.94
NFI	East Meadows	Students: 18 \$65,131.00	Students: 18 \$103,686.00	Students: 18 \$109,891.00
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WCMHS	Choice Middle School	Students: 16 \$49,834.35	Students: 16 \$57,573.00	Students: 16 \$140,666.00
WCMHS	Beckley Day Program	Students: 12 \$69,942.00	Students: 12 \$69,942.00	Students: 12 \$76,295.00

WCMHS	IPS Program	Students: ** \$96,244.00	Students: ** \$96,244.00	Students: ** \$112,866.00
WCMHS	Stars Program	Students: ** \$99,523.00	Students: ** \$99,523.00	Students: ** \$90,327.00

Low Level of Concern School Programs

Designated Agency	Independent School Program	FY20 Agency Fee & # of Students Served	FY21 Agency Fee & # of Students Served	FY22 Agency Fee & # of Students Served
The Clara Martin Center	East Valley Academy	Students: 24 No agency fees	Students: 24 \$98,604.00	Students: 24 \$116,885.00
HCRS (Health Care & Rehab Services)	Kindle Farms Regular Day Program	Students: 37 \$200,633.71	Did not apply for rate increase	Did not apply for a rate increase
HCRS	Kindle Farms Intensive 1:1 day program	Students: ** \$132,239.68	Did not apply for a rate increase	Did not apply for a rate increase
WCMHS	Laraway	No fees	No Fees	No Fees

Summary Data:

Designated Agency	Agency Fee Totals 2020 -2022	FTE or other services toward academic programs	Services provided to independent school by designated agency staff or programs
The Clara Martin Center	\$215,489.00	verified	verified
Howard Center	\$2,273,265.00	unverified	unverified
Health Care & Rehabilitation Services	\$332,873.39	unverified	unverified
Northeastern Family Institute	\$1,376,596.43	unverified	unverified
Washington County Mental Health	\$1,493,260.35	unverified	unverified

Laraway as part of WCMHS	No Fees	N/A	N/A
All Agencies	Total Agency Fees included in Tuition	FY20 – FY22	\$5,457,995.17 Unverified Costs \$215,489.00 Verified Costs

General Tuition Rate Setting for Designated Agency Schools:

A memo to heads of independent schools, from the Secretary’s office in late winter 2019, reminded schools all tuition rate applications, FY20, must separate special education and general education costs to ensure that contracting apportioned costs to the correct source; gen ed fund and IDEA. Under these requirements, tuition rate applications submitted to the AOE FY20, were more transparent and scrutiny of expenditures for determining allowability under SBE Rules supported the Agency’s goals for: special education cost monitoring, excess cost containment and to prohibit the commingling of special education expenditures with general education fund tuition costs.

A tuition rate setting memo released by the secretary’s office early fall of 2019 rescinded the requirement for separation of special education and gen ed costs within tuition rate setting applications. As a result, current tuition rate calculations include both special education and general education costs. The only costs not included in an official tuition rate, for designated agency schools, are treatment costs associated with CERT rate eligible school programs. Yet, designated agency schools persist with including agency fees as part of regular tuition rate application, without verifying costs as associated with academic programing, only.

The Agency of Education has attempted to address the issue of cost containment, designated agency fee transparency and allowability for quite some time. Formerly released AOE guidance included in this tuition study, provides detailed information issued to both LEAs and approved independent schools, 2013-2019. Other previously released memos on designated agency schools, do not focus primarily on allowability requirements of agency fee costs and are not included in this specific program evaluation. Legal authorities on tuition rate setting specify:

Board Rule Series 2200 requires independent school tuition costs must be “reasonably related to the cost of the academic program.” (SBE Rule 2228) Accordingly, Statute 16 V.S.A. §2973 states:

“The commissioner shall establish minimum standards of services for students receiving special education in independent schools in Vermont; shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the department and school districts for tuition, room and board based on level of services and may advise independent schools as to the need for certain special education services in Vermont.”

Provisions on tuition rate setting as outlined by both legal authorities do not currently address designated agency fee allocations. As a result, current Agency of Education personnel responsible for reviewing applications and setting rates do not have sufficient leverage to ensure correct apportionment of agencies fees as directly and “reasonably related to the cost of the academic program.”

Future Concerns

Under current statutory and State Board of Education rules, the process of independent school tuition rate setting lacks specificity on allowable costs for general education, special education, designated agency fees and what other types of administrative fees are allowable as part of a maximum tuition rate specific to education programming.

Special education schools associated with designated agencies do not currently comply with

AOE requests for clarification of costs or provide requested supporting documentation under current rule series, 2360 and 2200.

Independent School Team members are concerned with draft Rule tuition language specific to tuition Rule 2228 requirements, currently open for public comment. The proposed tuition rate setting section of draft rules, will further restrict agency tuition rate oversight, under "role-up" category language, and reduce even further appropriate AOE leverage for obtaining clarity on tuition rate costs. Proposed Rules also strictly proscribes the types of document requests the agency may submit to any independent school applying for a tuition rate. The opacity of draft rules will significantly inhibit the ability of responsible AOE personnel from tuition rate setting and program oversight with fidelity, for purposes of setting a fair rate, cost containment and appropriate relegation of costs to IDEA, gen ed fund or treatment costs through Department of Mental Health CERT rate processes.

Previously Released Agency of Education Guidance, 2013 - 2018:



1291_001.pdf



DobQAliceF1015201
3.pdf



ContractingMemo_0
8062019.docx

11/9/2021

Mail - Samuelson, Jennifer - Outlook

FW: Public Comments Rule 2200 Series

SBE - Public Comment <SBE.PublicComment@vermont.gov>

Fri 11/5/2021 5:18 PM

To: Olsen, Oliver <Oliver.Olsen@vermont.gov>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>

Cc: Cutler, Judy <Judy.Cutler@vermont.gov>

Hi Oliver and Jennifer,

This public comment was received today.

Very best,

Emily

Emily Simmons

General Counsel

Agency of Education

o) 802-828-1518 f) 802-595-4775

1 National Life Drive Davis St Montpelier, VT 05620-2501

From: Marilyn Mahusky <mmahusky@vtlegalaid.org>

Sent: Friday, November 05, 2021 4:12 PM

To: SBE - Public Comment <SBE.PublicComment@vermont.gov>

Cc: mroy <mroy@cvsdvt.org>

Subject: Public Comments Rule 2200 Series

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Thank you for your consideration.

Marilyn A. Mahusky

Staff Attorney

Disability Law Project

Vermont Legal Aid, Inc.

mmahusky@vtlegalaid.org

802-495-0494

Sent from Mail for Windows

12

VERMONT LEGAL AID, INC.

DISABILITY LAW PROJECT
56 MAIN STREET SUITE 301
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(802) 885-5181 (VOICE AND TTY)
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(800) 769-9164

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

November 5, 2021

Oliver Olsen, Chair
State Board of Education
1 National Life Drive, Davis 5
Montpelier, VT 05620

Via Email: Oliver.Olsen@vermont.gov

Re: Proposed Changes to Rule 2200 (Independent School Program Approval)

Dear Mr. Olsen:

On behalf of the Disability Law Project of Vermont Legal Aid, Inc., I submit the following comments relative to proposed changes to the State Board of Education's Independent School Rules, Series 2200; specifically, those related to section 2229.1 and the definition of "Approved Independent School Ineligible to Receive Public Funds, section 2222.

As you know, the Disability Law Project represents students in matters related to their special education and related services. We also represent students who do not qualify for special education under the Individuals with Disabilities Act (IDEA), 20 U.S.C. §§ 1400 et seq., but who have disabilities covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq. Many of our clients live in school districts with school choice options, and these rules directly impact their right to the same educational opportunities as their non-disabled peers.

While we appreciate the need for rules to ensure Vermont's Independent Schools remain robust, and available to all eligible students, we are concerned about the interplay between the rights of students with disabilities in tuition districts to be admitted, like their non-disabled peers, to the independent schools of their choice.

Changes to Title 16, Section 166(b) effective on July 1, 2023, appear to require, prior to placement in an independent school (and consequent receipt of public funds), IEP teams to "approve" the placement of a student in an independent school prior to his or her application or enrollment, *e.g.*, before he or she decides which school to attend. This effectively precludes the child with a disability from considering the same school as his non-disabled peers or attending the same school as his non-disabled siblings. This is what in part Act 173 intended to address – LEAs determining which schools' students with disabilities can attend. This provision and the proposed implementing rule are not only inconsistent with the IDEA but have the effect of discriminating against students with disabilities by denying them an equal opportunity, if they live in a tuition town, to apply to and attend the school of their choice. 9 V.S.A. §4502(c)(1).

The statutory language is mirrored in proposed Rule 2229.1:

In order for an in-state independent school to receive public tuition, it shall enroll any student with an individualized education program who requires special education services and who is placed in an approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA ...¹

Rule 2229.1 (as proposed).

Our concern is with the latter phrase, "... and who is placed in an approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA..." This statutory language and proposed implementing rule conflict with the IDEA and misinterpret the term "placement" as that term is used and understood in the IDEA. "Placement" and "Specific Site" are distinct terms and concepts under IDEA.

Many factors must be considered in making a student's placement determination under the IDEA. 34 C.F.R. §300.116. Placement decisions can only be made after the development of an IEP and in accordance with its terms. 65 Fed.Reg. 36,591 (2000). Equally important is ensuring conformity with the least restrictive environment provisions. 34 C.F.R. §300.116. "What is pertinent in making the placement decision will vary, at least to some extent, based upon the child's unique and individual needs." *Letter to Anonymous*, 21 IDELR 674 (OSEP 1994).

"Placement" in the IDEA context is not necessarily in a specific school, or classroom, but refers to the characteristics of the program, including the student to teacher ratio, the availability of supports and services, its nearness to the child's home, among other factors. Importantly, for LRE purposes, unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 C.F.R. §300.116. For students in tuition towns, often the school he or she would attend if nondisabled is the independent school in their community. What the statute and proposed rule do is treat a student with a disability differently from his or her non-disabled peers. The student would be prevented from applying to or enrolling in an independent school until AFTER the IEP team met and essentially "approved" his or her choice. That is not what the IDEA intended. And, it is not what Act 173 intended.

In adopting Act 173, the General Assembly recognized that "a student on an individualized education program is entitled, under federal law, to a free and appropriate public education in the least restrictive environment in accordance with that program. The changes to State funding for special education and delivery of special education services as envisioned under this act are intended to facilitate the exercise of [and not to interfere with] the exercise of this right." Act 173.

There is nothing under federal law that precludes an LEA from offering a student enrolled in an independent school his or her IEP supports and services in a different setting, or in a different manner. For example, a student needing physical therapy as a related service could receive that

¹ We are not concerned with and are not commenting on those students enrolled in independent schools pursuant to a written agreement between the LEA and the school.

service from a traveling physical therapist under a contract with the LEA, or the student could travel to the nearest public school for that service. In fact, these are the kinds of flexibilities intended in changing to a census-based funding model.

Our overarching concern in adopting this rule is that students with disabilities who live in tuition towns will be directed away from independent schools by IEP teams even before they have a chance to apply or enroll. That is the opposite of what was intended by Act 173 and puts the LEA in a position of making "placement" decisions that limit a student's choice. Limiting choice, preventing a child with a disability who lives in a tuition town to choose an independent school, separate and apart from the delivery of his or her IEP services, is problematic. It runs afoul of the antidiscrimination provisions of Section 504 and Vermont's Public Accommodations Act. Both the statute and the proposed implementing rule need to be revised so as to not interfere with the student's right to choose where he or she is educated.

This provision should again be considered by the Census-based Funding Advisory Group prior to adoption.

Thank you for your consideration.

Sincerely,

Marilyn A. Mahusky
Staff Attorney

C: Meghan Roy, Chair, CBFAG

Rule 2200 ~~22-000-004~~-INDEPENDENT SCHOOL PROGRAM APPROVAL (~~2200~~)

Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).

~~Section 2200 - Evaluation of Private Education Programs.~~

~~Section 2210 (reserved).~~

Section 2220 -~~Approval of Independent Elementary and Secondary Schools~~ Statement of Purpose.

The purpose of independent school approval rules is to assure effective, available, and equitable acceptable educational opportunities for students enrolled in Vermont's independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018.

Section 2221 -Statutory Authority.

16 V.S.A., §§ 166, and ~~16 V.S.A., § 2958(e), § and 2973.~~

Section 2222 Definitions.

Agency: means the Vermont Agency of Education.

Approved Independent School: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds) and SBE Rule 2226 (Application).

Approved Independent School Ineligible to Receive Public Funds: means an independent school that meets the requirements in SBE Rules 2226 (Application) and 2227 (Approval) but does not meet the requirements of rules concerning the delivery of special education services in SBE Rule 2229.

Board (or State Board or SBE): means the Vermont State Board of Education.

Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.

Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or 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 an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.

Recognized Independent School: means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.

Secretary: means the Secretary of the Vermont Agency of Education.

Special Education Fees: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

Special Education Services: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12.

Student: means a person age three through age twenty-one.

Student who requires additional support: means a student who meets the criteria defined in 16 V.S.A. § 2942(8).

Tuition: means funds paid by a school district to an approved independent school for general education in accordance with SBE Rule 2225.2.

Section 22232 -Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the ~~Commissioner~~Secretary of Education. ~~Independent schools which are recognized as provided for in 16 V.S.A., § 165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements of § SBE Rule 22265 (Application) below.~~

Upon receipt of an application for initial approval or renewal of approval, the ~~commissioner~~Secretary shall appoint a review committee of at least two persons.

~~The process below (22232.1 to 22232.7) shall be followed.~~

22232.1 Visit.

The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the ~~commissioner~~Secretary with other agencies of state government ~~that~~which inspect such facilities.

22232.2 Report.

The committee shall ~~present~~write a report, including a written initial recommendation regarding approval, to the ~~Commissioner~~Secretary. A copy of their initial recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval ~~is made by the Commissioner~~Secretary to the State Board. The Secretary's final recommendation report shall contain the findings of other agencies of state government ~~which that~~which inspect such facilities.

2223.3 General Conditions for Approval.

Approval shall be recommended for an independent school- offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, including Rule 2226 and Rule 2227. Effective July 1, 2023, an independent school that intends to accept public tuition must also meet the requirements of SBE Rule 2229. Effective July 1, 2023, A a school meeting approval requirements in SBE Rules 2226 (Application) and 2227 (Approval) but not Rule 2229 (Approval to Receive Public Tuition, Special Education Approval) may be recommended for approval but may not receive public tuition. ~~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, 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.~~

2223.43 -Review.

The ~~Commissioner~~Secretary shall designate a date for action by the ~~b~~Board. Officials of the school shall be notified of this date.

2223.54 -Renewal.

Not less than six months prior to expiration of a ~~S~~school's approval, the ~~Commissioner~~Secretary shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received- from the school not later than 30 days prior to the scheduled site visit.

2223.65 -Extension.

Approval of a school completing a timely, application for further approval shall extend until the ~~b~~Board acts on further approval.

2223.76 -Termination.

Approval of an independent school ~~which~~that fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

2223.87 -Denial, Revocation, or Suspension of Approval.

Prior to recommending ~~denial~~, revocation, or suspension of approval, the ~~Commissioner~~Secretary shall ~~obtain the written recommendation of the Council of Independent Schools~~ initiate a formal investigation pursuant to rule 2223.9 (Complaints; Investigations). Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion on the same. If, after receiving the ~~council's~~Council's ~~recommendation~~opinion, the ~~commissioner~~Secretary determines that ~~denial~~, revocation, or suspension of approval is warranted, ~~the Secretary~~he shall

notify the State Board of the recommendation and provide notice to the school. The State Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation. of the reasons for the proposed action and shall afford the school an opportunity to be heard by the Board. Approval of an independent school shall be revoked or suspended by the board based on a finding that the school no longer meets the criteria for approval listed in section 2226.

Section 2228.1 Revocation

- (a) After providing an opportunity for hearing, the Board may revoke, suspend, or impose conditions on the approval of an approved independent school for:
- (1) Failure to demonstrate that the school has the resources required to meet its stated objectives;
 - (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools;
 - (3) Failure to report any of the financial events listed in (b) below; or
 - (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).
- (b) An approved independent school shall report to the Secretary within five days after its knowledge of if any of the following events, unless the failure is de minimus:
- (1) The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;
 - (2) The school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
 - (3) The school's failure to maintain required retirement contributions;
 - (4) The school's use of designated funds for nondesignated purposes;
 - (5) 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;
 - (6) The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
 - (7) The school's insolvency as defined in 9 V.S.A. § 2286(a).
- (c) If the State Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. § 166(b)(8)(B).
- (d) If the State Board, after having provided the school a reasonable opportunity to respond to the Board's notification, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the Board may establish a review team that, with the consent of the school, includes a member of the Council of Independent Schools, to:
- (1) Conduct a school visit to assess the school's financial capacity;
 - (2) Obtain from the school such financial documentation as the review team requires to perform its assessment; and
 - (3) Submit a report of its findings and recommendations to the State Board.

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(e) 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.

~~(a) 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.~~

(f) 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.

(g) Information provided by a school under this section 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 according to 16 V.S.A. § 166(b)(8).

~~2222.8-2223.8.29 Investigations~~ **Complaints; Investigations.**

(a) The Secretary shall conduct an initial investigation of Reports or complaints to the commissioner concerning matters related to the approval standards and laws that apply to approved independent schools. ~~shall be investigated if it appears such action is warranted. If, following an initial investigation, the Secretary finds a violation of approval standards or laws that apply to approved independent schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved independent school on probation.~~

(b) At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation.

(c) An approved independent school may appeal the imposition of probation to the State Board by requesting a hearing as provided above.

(d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.

(e) Formal Investigations

(1) The school shall receive notification of the complaint unless contraindicated by the particular facts.

(2) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a A-review team of at least two persons ~~shall be appointed by the Commissioner~~ Secretary including a member of the Council of Independent Schools. The team will conduct the investigation ~~after initial inquiries~~ and will inform the Secretary and the school of the results. The process in SBE Rule 2223.8 shall then apply.

(3) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the

~~Department of Social and Rehabilitation Services for Children and Families.~~ Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the ~~department to the appropriate agency.~~

22232.109 - Corrections Education Program.

Form:

To the extent applicable, the ~~commissioner~~ Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8 as if it were an independent school.

Section 22243 - Reciprocity for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

Form:

Form:

Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. ~~Such~~ In addition to the accrediting agencies are listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England and the New England Association of Schools and Colleges. ~~of the Board Manual of Rules and Practices.~~ Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the ~~Department of Education~~ Agency by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the approval process. A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency within five days of a change to its accreditation.

Section 22254 - Tuition from Public Funds.

Form:

~~22254.1 Tuition may not be paid from public funds to any independent elementary or secondary school in Vermont not approved by the bBoard.~~

2225.1 22254.2 - Tuition for Independent Schools in Vermont.

Form:

~~(a)~~ Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in SBE Rule 2226 (Application), SBE Rule 2227 (Approval), and SBE Rule 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where: for any Vermont child who has been determined eligible for special education unless:

- ~~(a)~~ (a) The school is approved for special education purposes pursuant to Rule 2228 et seq.;
- ~~(b)~~ (a) ~~(ab)~~ There is an order from a court or from a due process hearing pursuant to SBE Rule 2365.1.6 requiring such payment, or
- ~~(c)~~ (b) ~~(bc)~~ The ~~Commissioner~~ Secretary has approved an exception for a placement in an independent school pursuant to SBE Rule 2228.2(2)2230.1.

22254.23 Tuition for Out of State Schools

Form:

~~In order for tuition~~ Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828, ~~the school must be accredited or approved by the host state or by an accredited or approved by the host state or by an accrediting agency recognized by the State Board. The Board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.~~

Section 22265 -Application for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

Form:

Form:

An application for initial approval or renewal of approval shall contain the following:

22265.1 The name and address of the school.

22265.2 A statement of the school's philosophy and purpose.

22265.3 A description of the school enrollment including a statement of how~~whether~~ it is designed to serve children ~~with a particular disability or with disabilities generally.~~

22265.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

22265.5 A description of the curriculum, methods of instruction, evaluation procedures and special services ~~which that~~ the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A., Section § 906.

22265.6 ~~A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable sState and federal requirements. Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following:~~

(1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 141 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 495.

(2) An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.

(3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements.

22265.7 Evidence of compliance with local, sstate, and federal requirements pertaining to the health and safety of ~~pupils~~students.

22265.8 Statements regarding professional staff including:

22265.8.1 Professional Staff qualifications.

(1) A job description for each ~~Position~~-position or a statement describing training, experience, and degree(s) required for each ~~position~~.

(2) A resume, vita, or description of appropriate qualifications for each current staff member.

(3) Current assignment of each professional staff member.

22265.8.2 Professional Staff Development.

(1) A general statement of the institution's expectations for professional growth of staff.

(2) A statement describing the school's inservice training and financial and other support given to staff for professional development; ~~and.~~

(3) A description of professional development in the prior two years.

22265-8.3 Professional Environment.

(1) A list of staff and length of service.

(2) A description of staff meetings.

(3) A description of other staff duties that are not related to teaching or administration duties.

22265.9 Evidence of financial capacity, which may be shown by 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~~ State Board for accrediting purposes concerning the school's financial capacity.

22265.10 The school calendar.

22265.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A., ~~§~~ § 166(b)(3).

Section 22276 - Approval of Application.

The 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 16 V.S.A. § 906 and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The Board shall make the following findings prior to approval:

~~The board may approve an independent school if it finds that:~~

22276.1 The description of the school in the approval application is accurate.

22276.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

22276.3 The school has available support services necessary to meet the ~~he~~ requirements of a minimum course of study and its educational purposes, including ~~but not limited to~~ library services,

administrative services, guidance and counseling services, and a system of records by which ~~pupil~~ student progress may be assessed.

22276.4 The school has classroom, laboratory, library, and other facilities necessary to operate its program.

22276.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

22276.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

22276.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

22276.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

22276.7 The school employs a sufficient number of professional staff for the population served.

~~22276.8 The school satisfies lawful legal requirements relative to its facilities, fire drills, and the immunization of its pupils students against disease.~~ The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease.

22276.9 The school maintains a register of the daily attendance of each of its ~~enrollment~~ enrolled students.

22276.10 The school maintains an operating schedule that includes a total number of instructional hours each year ~~which that~~ is not less than that required of a public school serving the same grades.

22276.11 The school has the financial capacity to carry out its ~~educational purposes~~ stated objectives for the period of approval. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

2227.12 The school complies with the requirements of 16 V.S.A. § 255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry.

2227.13 The school complies with legal requirements concerning nondiscriminatory school branding.

2227.14 The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure.

Section 22287 -Length of Approval.

The ~~board~~ State Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

Form:

Section 22298 - Special Education Approval of Independent Schools, Approval to Receive Public Tuition, Special Education Approval.

Form:

Form:

22298.1

2229.1(1) Enrollment: Requirements for Approved Independent Schools, Students, and LEAs.

Form:

In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it shall obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.

a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:

1) That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;

2) Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;

3) The school's process for making enrollment decisions when the number of applicants exceeds capacity;

4) That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or State law.

b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in 2229.4, after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in Rule 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Rule 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to subsection Rule 2229.4(f), below.

d) This Rule, 2229.1, shall not apply to a therapeutic independent school.

2229.2 Staffing.

(2) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve.

(3) The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

2229.3 Assurances.

The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:

(a) Demonstrating an understanding of special education requirements, including:

- (1) Provision of a free and appropriate public education in accordance with federal and State law.
- (2) Provision of education in the least restrictive environment in accordance with federal and State law.
- (3) Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law.
- (4) Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.

(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress.

(c) Employing or contracting with staff who have the required licensure to provide special education services.

(d) Agreeing to communicate with the responsible LEA concerning:

- (1) Development of, and any changes to, the IEP.
- (2) Services provided under the IEP and recommendations for a change in the services provided.
- (3) The student's progress.
- (4) Maintenance of the student's enrollment in the independent school.
- (5) Identification of students with suspected disabilities.

(e) Committing to participate in dispute resolution as provided under federal and State law.

2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools.

a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the

student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.

b) The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with State and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the State Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.

c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding SBE Rule 2354.3(a)(2). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.

d) The student's special education and related services shall be provided in the least restrictive environment.

e. To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:

1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;

2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school.

3. The approved independent school contracting with the LEA to provide the services.

4. The LEA providing the services at a public school operated by the LEA or another public school.

f. If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.

g. If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Rule 2223.8 due to its failure to enroll or continue to enroll the student.

h. This Rule, 2229.4, shall not apply to a therapeutic independent school.

~~(2) Limitation of Special Education Approval.~~

~~Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.~~

2229.5 (3) Out-of-State Programs.

~~(a) Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Vermont State Board of Education, it the school shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.~~

~~(a)(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.~~

2229.6 Approval Procedures to Receive Public Funds.

~~(a) Application for public funds approval shall be made at the time of application under SBE Rule 2223 et seq. An independent school that has already obtained independent school approval from the Board may at any time submit an application for public tuition approval to the Secretary.~~

~~(b) Application for special education funding approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.~~

~~(c) The procedures for public tuition approval shall be the same as those for approval in accordance with SBE Rule 2223 et seq. Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.~~

2229.7 Notification.

~~After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board under Rule 2223.8 for a change to a school's approval status an independent school's approval for public tuition purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the -Board. If the school disagrees with the proposed change to its approval for public tuition purposes status, the Board shall hear the matter in accordance with the requirements of SBE Rule 1230, et seq.~~

2229.8 Minimum Level of Service.

Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973, if those services are offered according to a written agreement with the sending responsible agency, as required by SBE Rule 2231.

~~22298.2~~

(1) Section 2230 Placement Prohibition.

No responsible agency, as defined by SBE Rule 2360.3, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition for special education purposes nor shall such a placement be made in an independent school that serves special education children who are in a category of disability different from that under which the child was determined to be eligible for special education pursuant to the conditions in Rule 2229, unless the placement is pursuant to:

- (a) ~~(a) Subsection Rule 2230.1(2) of this rule;~~
- (b) ~~(b) A court order;~~ or
- (c) ~~(c) A hearing officer's order.~~

(2) 2230.1 Exceptional Circumstances - Approval Process.

Upon application by a responsible LEA, the ~~Commissioner~~Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to SBE Rule 2223, et seq.~~00~~, but that has not been approved to receive public tuition under Rule 2229 received approval for special education purposes pursuant to Rule 2228.1. Notwithstanding Rule 2366.2-2(7), in instances in which the ~~Commissioner~~Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the ~~Commissioner's~~Secretary's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. § 828.

- (a) Exceptional circumstances exist when:
 - (1) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to SBE Rule 2229~~8.1~~ to serve children with the category of disability under which the child was determined to be eligible for special education; and
 - (2) The proposed placement is deemed appropriate by the child's IEP team.
- (b) The ~~Commissioner~~Secretary may specify conditions under which the placement is to be carried out.

~~22298.3~~ In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- ~~(1) Admissions;~~
- ~~(2) Least restrictive environment;~~

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~~(3) Discipline;~~

~~(4) Graduation;~~

~~(5) Faculty qualifications; and~~

~~(6) Faculty-child ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed children on IEPs;~~

~~22298.3.1 In order to obtain special education approval an independent school shall coordinate with sending responsible agencies, parents, public agencies, and other service providers serving a child by:~~

~~(1) Maintaining educational records and disclosing them to the sending responsible agency and the child's parents;~~

~~(2) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;~~

~~(3) Implementing IEPs; and~~

~~(4) Providing prior notice to the sending LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.~~

~~These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.~~

~~22298.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.~~

22298.4 Section 2231 -Written Agreements Required.

22298.4.1 2231.1 -Agreement as to Costs.

~~(a) In order to obtain special education approval to receive public tuition, an independent school shall assure the State Board of Education that, prior to enrolling a publicly-placed child who is served pursuant to an IEP pursuant to Rule 2229.1, it the school will enter into a written agreement with the LEA committing to the requirements set forth in SBE Rule 2229.3 and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. sending responsible agency that The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Commissioner Secretary, in accordance with 16 V.S.A. § 2948, the agreement shall be with the Commissioner of Education Secretary. In the instance of an emergency placement, such provisions may shall be agreed upon within thirty 30 days of the child's enrollment.~~

~~(b) The Secretary shall consult with independent schools in Vermont the State and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition cannot shall not exceed the school's actual or anticipated costs of providing special education services to the student and may shall not exceed the maximum rates set by the~~

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Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.

(c) An approved independent school that enrolls a student with an IEP pursuant to Rule 2229.1, may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. -Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.

(d) An approved independent school that enrolls a student under SBE Rule 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

2228.4.2-2231.2 -Agreement as to Non-Instructional Services.

In order to obtain ~~special education approval to receive public tuition,~~ an independent school shall assure the ~~State Board of Education that,~~ within thirty days of enrolling a ~~publicly placed child who is served pursuant to with~~ an IEP, ~~it the school~~ will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the ~~Commissioner~~Secretary, this agreement shall be with the ~~LEA~~local educational agency that has educational planning responsibility for the child.

2228.5 -Special Education Approval Procedures

~~(1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education may at any time submit an application for special education approval to the Commissioner.~~

~~(2) Application for special education approval shall be submitted in writing to the Commissioner in accordance with the format prescribed by the Commissioner.~~

~~(3) The procedures for special education approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.~~

~~2228.6 After receiving approval for special education purposes, an independent school shall notify the Commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The Commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Commissioner may return to the State Board for a change in the school's approval for special education purposes. If the Commissioner petitions the State Board for a change to an independent school's approval for special education purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.~~

~~2228.7~~ Independent schools that are approved for special education purposes shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. §2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

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~~2228.8~~ Rate Approval for Independent Schools Approved for Special Education Purposes

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(1) Each independent school approved for special education purposes ~~to receive public tuition~~ by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Commissioner ~~Secretary~~ on a form prescribed for that purpose.

(2) The rates that an independent ~~school~~ approved for public tuition facility approved for special education purposes ~~charges for tuition, special education and related services and room and board~~ shall be no more than the actual or anticipated costs of providing the special education and related services and shall not exceed the maximum rates set by the Secretary, that are reasonably related to the level of services provided to its publicly placed special education children. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(3) The Commissioner ~~Secretary~~ shall review each special education approved independent school's annual rate report. If the Commissioner ~~Secretary~~ concludes that an special education approved independent school's rates are not reasonably related to the actual or anticipated costs of providing the services or exceed the maximum rates set by the Secretary, the Secretary shall not approve the rates unless he or she deems the higher rates to be warranted. level of services provided to publicly placed special education children, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those In making that determination, the Secretary shall services and offer the school an opportunity for explanation regarding why the maximum rate set by the Secretary the Department would pay is not adequate. If the explanation is not satisfactory to the Commissioner ~~Secretary~~, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.

(a) Upon such referral by the Commissioner ~~Secretary~~, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

(b) The State Board's determination shall be final.

(4) Time lines for rate approvals from the Department

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Department prior to November 15. The Commissioner shall notify the independent school of the results of the review on or before January 15.

(b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

Section 2232 Rate Approval for Therapeutic Approved Independent Schools.

(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent

schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.

- (b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.
- (c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.
- (d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:
- (1) Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:
 - (A) Salaries for all employees and full-time equivalents as applicable
 - (B) Program-related Contractual Services
 - (C) Operations-related Contractual Services
 - (D) General Operating
 - (E) Program
 - (F) Travel/Transportation
 - (G) Building – Direct
 - (H) Building – Allocated
 - (I) Admin I – Allocated
 - (J) Admin II – Allocated
 - (K) Fringe – Allocated
 - (2) The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.
- (e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.

- (f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.
- (g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:
 - (1) Establish standards for developing and applying a database of comparable information to be utilized in rate determinations, and publish the standards on the Agency's website.;
 - (2) Annually update the database of comparable information.
 - (3) Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.
- (h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).
- (i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.
- (j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.
- (k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the State Board in accordance with the requirements of SBE Rule 1230, et seq. Alternatively, a therapeutic school may appeal to the State Board pursuant to SBE Rule 1230, et seq. without first seeking reconsideration by the Secretary. The State Board's determination of the appeal shall be final.

2233228.9 -Standards and Regulations.

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

CORRECTIONS PROGRAMS

Section 223429 -Corrections Education Program.

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~~To the extent applicable, the Commissioner~~ The Secretary shall conduct ~~his or her~~ review of the Corrections Education Program in accordance with the procedures and standards contained within SBE Rules 2220 through 2228.82229, ~~as if it were an independent school.~~

TUTORIAL PROGRAMS

Section 22350 Approval of Tutorial Programs.

Statutory authority: 16 V.S.A. § 828.

22350.1 Definitions.

"Tutorial program" means education provided to a ~~pupil~~ student who is placed in a short-term program that is not administered by an LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. § 166-. The average length of stay for children in a tutorial program shall be not more than six months. The ~~Commissioner~~ Secretary may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.

22350.2 Procedures for Approval

22350.2.1 Application.

An application for approval or renewal of approval as a tutorial program shall include the following:

- (a) Name, address, telephone number of the tutorial program.
- (b) Name of the Chief Executive Officer or contact person.
- (c) A statement of the tutorial program's purpose and objectives.
- (d) A description of the tutorial program's enrollment, including a statement of whom it is designed to serve.
- (e) A description of the plan of organization for the tutorial program.
- (f) A tutorial program calendar.

22350.2.2 Review.

Upon receipt of an application for approval, the ~~Commissioner~~ Secretary shall appoint a committee of at least two persons to review the application and visit the tutorial program.

22350.2.3 Report to the ~~Commissioner~~ Secretary.

The appointed committee shall present a written recommendation regarding possible approval to the ~~Commissioner~~ Secretary. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the ~~Commissioner~~ Secretary to the State Board of Education.

22350.2.4 Board Action.

The ~~Commissioner~~ Secretary shall recommend approval or disapproval for action by the State Board at ~~their~~ its next regular meeting. Officials of the tutorial program shall be notified of this meeting date.

22350.2.5 Term of Approval.

The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.

22350.2.6 Renewal.

Not less than three months prior to expiration of a tutorial program's approval, the ~~Commissioner~~ Secretary shall send an application packet and a letter notifying the program when ~~the a~~ a site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.

22350.2.7 Denial, Revocation, or Suspension of Approval.

Prior to recommending denial, revocation, or suspension of approval to the State Board of Education, the ~~Commissioner~~ Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

22350.2.8 Standards and Regulations.

The ~~Vermont State Board of Education~~ shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

22350.3 Criteria for Approval.

In order for a tutorial program to obtain approval or renewal of approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:

- (a) ~~22350.3.1~~ The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in ~~Rule 2230.3.10, subsection (j)~~ below.
- (b) ~~22350.3.2~~ The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- (c) ~~22350.3.3~~ The tutorial program's facilities and operation comply with local, ~~state~~ State, and federal requirements pertaining to the health and safety of children.
- (d) ~~22350.3.4~~ The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas ~~in to~~ in which they are assigned.
- (e) ~~22350.3.5~~ Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- (f) ~~22350.3.6~~ All professional staff ~~has~~ have relevant experience and/or training in the duties to which they are assigned.

- (g) ~~22350.3.7~~ The tutorial program maintains a register of the daily attendance of each of its ~~pupils~~ students and reports the attendance to the responsible LEA.
- (h) ~~22350.3.8~~ The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.
- (i) ~~22350.3.9~~ The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- (j) ~~22350.3.10~~ The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school, and coordinates with other responsible agencies such as ~~the~~ Department of for Children and Families, ~~c~~Community ~~m~~Mental ~~h~~Health ~~c~~Centers, and ~~f~~Family-~~P~~arent ~~Child~~ ~~child~~ ~~c~~Centers by:
 - (1) ~~22350.3.10.1~~ Contacting the responsible LEA-(s) (see 16 V.S.A. §_1075-) in order to access school records and determine the special education status of the child.;
 - (2) ~~22350.3.10.2~~ Reviewing the IEP, the child's needs, and the tutorial's own ability to implement the IEP.;
 - (3) ~~22350.3.10.3~~ Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, the child~~he/she~~ is suspected of having a disability.;
 - (4) ~~22350.3.10.4~~ Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order, or other legally binding document specifically revoking those rights.;
 - (5) ~~22350.3.10.5~~ Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services.;
 - (6) ~~22350.3.10.6~~ Implementing IEPs.;
 - (7) ~~22350.3.10.7~~ Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.
- (k) ~~22350.3.11~~ In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least each of the following areas:
 - (1) ~~(1)~~ Admissions.;
 - (2) ~~(2)~~ Discipline.;
 - (3) ~~(3)~~ Significant change in placement.

22350.4 Rate Approval for Non-Residential Tutorial Programs.

- (a) ~~22350.4.1~~ Each tutorial program shall annually report its rates for tuition, related services, and room and board, if applicable, to the ~~Commissioner~~ Secretary on a form prescribed for that purpose.
- (b) ~~22350.4.2~~ The rates that a tutorial program charges for tuition, related services, and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

- (c) ~~22350.4.3~~ The ~~Commissioner~~ Secretary shall review each tutorial program's annual rate report. If the ~~Commissioner~~ Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the ~~Commissioner~~ Secretary shall make a determination as to the maximum rate that public school districts and the ~~State Department Agency of Education~~ would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the ~~Department Agency~~ would pay is not adequate. If the explanation is not satisfactory, the ~~Commissioner~~ Secretary shall refer the matter to the State Board of Education.
- (1) ~~22350.4.3.1~~ Upon such referral by the ~~Commissioner~~ Secretary, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of SBE Rule 1230, et seq.
- (2) ~~22350.4.3.2~~ The State Board of Education's determination shall be final.

~~STATE BOARD OF EDUCATION RULES FOR DISTANCE LEARNING SCHOOLS~~

Section ~~22361~~ Approval of Distance Learning Schools.

Section ~~22372~~ Statutory Authority.

~~16 V.S.A. Section~~ 16 V.S.A. § -166-(b)-(6).

Section ~~22383~~ Definition.

A "Distance Learning School" means an independent school ~~which that~~ offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means and ~~which that~~, because of its structure, does not meet some or all the rules of the ~~State Board~~ for approved independent schools and is ineligible to receive public tuition payments pursuant to 16 V.S.A. § 166(b)(6).

Section ~~22394~~ Procedures and Standards.

The distance learning school shall meet the procedures and standards set forth in ~~rules~~ Rules 2220-22287, above, ~~which that~~, because of its structure, can be applied, and the following rules:

- (a) ~~22394.1~~ The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (b) ~~22394.2~~ The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of the Vermont Statutes Annotated.
- (c) ~~22394.3~~ The distance learning school offers an educational program ~~which that~~ is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.
- (d) ~~22394.4~~ The distance learning school has policies and procedures to:
- (1) ~~(1)~~ Enroll students who reasonably can be expected to benefit from the instruction offered by the program, ~~and~~
 - (2) ~~(2)~~ Measure student progress to ensure that students continue to benefit from such instruction.

- (e) ~~22394.5~~ The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.
- (f) ~~22394.6~~ The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.
- (g) ~~22394.7~~ Tuition:
 - (1) ~~22394.7.1~~ Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from school districts pursuant to 16 V.S.A. § 166(b)(6).
 - (2) ~~22394.7.2~~ The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.
- (h) ~~22394.8~~ In the event that the school closes, the distance learning school has policies for:
 - (1) ~~(1)~~ Tuition adjustment or refund, ~~and~~
 - (2) ~~(2)~~ Preservation and release of student records.

POST-SECONDARY SCHOOLS

Section 2240 Certification of Post-Secondary Schools.

2240.1 Definitions.

- (a) ~~2240.1.1~~ "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.
- (b) ~~2240.1.2~~ "A post-secondary school whose primary operation is in, the sState of Vermont" means a post-secondary school ~~which that~~ offers the majority of its courses in an institution in Vermont or ~~which that~~ maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.
- (c) ~~2240.1.3~~ "Confer a degree" and "degree-granting authority" ~~for the purposes of these rules,~~ means the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school ~~which that~~ offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.
- (d) ~~2240.1.4~~ "Business organization", for the purposes of 16 V.S.A., § 176(d)(1)-, may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

Section 2241 Certification of Post-sSecondary Schools Chartered in Vermont.

2241.1 Statutory Authority.

16 V.S.A. § 176.

2241.2 [Repealed].

2241.3 Application for Certificate of Approval.

A person desiring a certificate of approval or certificate of degree-granting authority from the State Board of Education shall file an application with the Secretary prior to offering post-secondary credit-bearing courses or programs and prior to admitting its first student. The application shall indicate the certification sought and shall include a description of the school ~~which~~ that contains the following:

- (a) ~~(a)~~ The name, location and legal nature of the school, including a copy of the articles of association or other documents descriptive of the legal nature of the school.
- (b) ~~(b)~~ The credits or degree(s) ~~which~~ that the school proposes to offer.
- (c) ~~(c)~~ The time schedule by which the school intends to implement the program for which certification is sought.
- (d) ~~(d)~~ The purpose and philosophy of education of the school.
- (e) ~~(e)~~ The organization of the school, including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) ~~(f)~~ A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) ~~(g)~~ The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) ~~(h)~~ A description of the school's physical plant, library, and equipment.
- (i) ~~(i)~~ A description of academic programs, including their level, site, and length. The application shall set forth, ~~if any,~~ the minimum credit requirements, if any.
- (j) ~~(j)~~ A statement regarding the school's professional staff, including its ~~policy~~ policies regarding appointment, promotion, tenure, (if applicable), dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) ~~(k)~~ A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) ~~(l)~~ ~~The~~ official website address, a copy of all catalogues or brochures publicly distributed by the school, and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) ~~(m)~~ If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.
- (n) ~~(n)~~ Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

Section 2242 Certification of Post-sSecondary Schools Not Chartered in Vermont.

2242.1 Statutory Authority.

16 V.S.A. § 176a.

2242.2 Application for Certificate of Approval.

A person desiring a certificate of approval from the State Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under SBE Rule 2240.1-3, subsection (c). The application shall include a description of the school ~~which~~ that contains the following:

- (a) ~~(a)~~ The name, location, and legal nature of the school, including a copy of articles of association or other documents descriptive of the legal nature of the school.
- (b) ~~(b)~~ The credits or degree(s) ~~which~~ that the school proposes to offer.
- (c) ~~(c)~~ The time schedule by which the school intends to implement the program for which certification is sought.
- (d) ~~(d)~~ The purpose and philosophy of education of the school.
- (e) ~~(e)~~ The organization of the school including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) ~~(f)~~ A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited, financial statement prepared by a certified public accountant.
- (g) ~~(g)~~ The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) ~~(h)~~ A description of the school's physical plant, library, and equipment.
- (i) ~~(i)~~ A description of academic programs, including their level, site, and length. The application shall set forth, ~~if any~~, the minimum credit requirements, ~~if any~~.
- (j) ~~(j)~~ A statement regarding the school's professional staff, including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) ~~(k)~~ A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) ~~(l)~~ A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) ~~(m)~~ If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.
- (n) ~~(n)~~ Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.
- (o) ~~(o)~~ A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.
- (p) ~~(p)~~ Documentation of accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education.

2242.3 Registration.

A post-secondary school seeking continued operation in Vermont after initial approval from the State Board of Education shall register with the Agency of Education within one-year of receiving approval from the State Board of Education and annually thereafter on or before September 1. Registration shall be on a form ~~prescribed~~ prescribed by the Secretary of Education.

Section 2243 Review Process for Post-Secondary Schools Chartered in In and ~~Out of~~ Outside Vermont.

2243.1 Review of Application for Certificate of Approval for Schools Chartered in In and ~~Outside~~ out of Vermont.

Upon receipt of an application for a certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents by, if necessary, ~~by~~ visiting the school. The team shall present a written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of ~~this~~ the recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board.

2243.2 Review of Application for Certificate of Degree Granting Authority.

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of SBE Rule 2243.6-1, subsection (a) are met, the Secretary shall contact the Vermont Higher Education Council, which shall review the application and determine the accuracy of its contents by, if necessary, ~~by~~ visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Vermont Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board. The State Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

2243.3 Renewal of Certification.

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification. Any school seeking renewal, that has obtained initial approval to offer or operate a program of college or professional education for credit or degree, on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the U.S. Department of Education, in order to be considered eligible for renewal by the State Board within the first 10 years of operation.

2243.4 Costs of Review.

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 V.S.A. § 177 to the ~~Vermont Agency of Education~~ to cover the costs of services related to the certification. In addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 V.S.A. § 177 to the ~~Vermont Agency of Education~~, a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food, and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

2243.5 Criteria for Issuance of a Certificate of Approval.

To be issued a certificate of approval, an applicant shall demonstrate the following:

2243.5.1 Resources Required to Meet Stated Purposes.

The school shall submit a clear and specific statement of purpose regarding the education ~~which~~that it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

2243.5.2 Stability.

- (a) ~~(a)~~ Sources of Income. The school shall have a plan for financing each proposed degree ~~eve~~-or program. The plan shall specify the dollar amounts and proportions of income by source, including ~~but not limited to~~:
 - (1) ~~(1)~~ Tuition and fees,
 - (2) ~~(2)~~ Other school-generated funds,
 - (3) ~~(3)~~ federal or State funds, ~~and~~
 - (4) ~~(4)~~ Private funds.
- (b) ~~(b)~~ Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.
- (c) ~~(c)~~ Management. The school shall operate under a governing structure ~~which~~that clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound

business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

2243.5.3 Disclosure₂

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission₂, or transfer of credit. The following information shall be disclosed on the school's website and in a general catalogue, bulletin₂, or other public information document provided to prospective students prior to enrollment₂:

(a) Name and physical address of school.

~~(a) Name and physical address of school.~~

~~(a)(b) _____ (b) Date of publication of the document and the period of time to which it pertains.~~

~~(b)(c) _____ (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.~~

~~(c)(d) _____ (d) The purpose and philosophy of education of the school.~~

~~(d)(e) _____ (e) A brief description of the school's physical facilities as related to the educational program.~~

~~(e)(f) _____ (f) An accurate list of all educational activities.~~

~~(f)(g) _____ (g) An indication of when specific required courses or other required learning experiences will normally be available.~~

~~(g)(h) _____ (h) Educational content of each course, or of the program if separate courses do not exist.~~

~~(h)(i) _____ (i) The length of time in hours, weeks₂, or months normally required for completion of the educational program.~~

~~(i)(j) _____ (j) An accurate listing of current educational providers.~~

~~(j)(k) _____ (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.~~

~~(k)(l) _____ (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.~~

~~(l)(m) _____ (m) Requirements for graduation.~~

~~(m)(n) _____ (n) SA statement of the certificates or diplomas awarded upon graduation, if any.~~

~~(n)(o) _____ A s~~(o)~~ Statement of the degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.~~

~~(o)(p) _____ The s~~(p)~~ System of grading or evaluation.~~

- ~~(p)~~(g) _____ ~~(q)~~-The school's policy establishing standards for determining adequate progress.
- ~~(q)~~(r) _____ ~~(r)~~-The availability and extent of ~~such~~ student services such as job placement services, counseling for ~~Academic-academic~~ and personal problems, food service facilities, and parking facilities.
- ~~(r)~~(s) _____ ~~(s)~~-The availability of financial aid.
- ~~(s)~~(t) _____ ~~(t)~~-An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, Sstate Veteran's Affairs-approving agency course approval, sState certification.
- ~~(t)~~(u) _____ ~~(u)~~-The school's policy regarding the refund of tuition and other fees collected in advance of enrollment or class attendance.
- ~~(u)~~(v) _____ ~~(v)~~-The school's "closing" policy establishing procedures that ~~which~~ will be followed in the event that a determination is made to cease operation.
- ~~(v)~~(w) _____ ~~(w)~~-The school's student records policy with provisions regarding access, disclosure, and the cost of copies.
- ~~(w)~~(x) _____ ~~(x)~~-A statement that credits earned at the school are transferable only at the discretion of the receiving school.

2243.5.4 Facilities.

The school's facilities shall meet all applicable ~~s~~State, federal and local fire, safety, health, and access standards.

2243.5.5 Student Records.

The school shall have adequate procedures for the safe-keeping of student records and for complying with the requirements of 16 V.S.A., § 175-.

2243.5.6 Waiver of Requirements for Certification.

A school ~~which~~ that believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

2243.6 Criteria for Issuance of a Certificate of Degree Granting Authority.

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

2243.6.1 Degree Criteria

- (a) Schools desiring to offer post-secondary degrees, including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met.
- (b) Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences.

(c) Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences.

~~(a)~~(d) Candidates for a degree shall be required to complete a coherent program of study.

2243.7 Certification Limitations.

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms, or limitations as the Board deems necessary. A school ~~that~~which has been granted either a certificate of approval or a certificate of degree granting authority shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State Board may require a school to reapply for certification following program changes ~~that~~which are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

2243.8 Denial, Approval with Stipulations, Revocation, or Suspension of Certification.

2243.8.1 Process.

Prior to recommending denial, approval with ~~s~~Stipulations, revocation, or suspension of certification to the State Board, the Secretary shall notify ~~in writing~~ the school in writing of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or ~~his or her~~ the Secretary's designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

2243.8.2 Criteria for Revocation or Suspension.

The Board may suspend or revoke certification for good cause. ~~Good cause shall include, but not be limited to, including:~~

- (a) ~~(a)~~ Failure of the school to continue to meet criteria for certification herein specified.
- (b) ~~(b)~~ Failure of the school to meet the terms and conditions or limitations of certification established by the Board.
- (c) ~~(c)~~ Falsification of information provided to the Board.
- (d) ~~(d)~~ False or deceptive advertising.
- (e) ~~(e)~~ Judgment of bankruptcy in a liquidation proceeding.
- (f) ~~(f)~~ Ceasing of operation, ~~or~~
- (g) ~~(g)~~ Refusal to permit team evaluation or other investigations provided for under these regulations~~rules~~.
- (h) ~~(h)~~ Change in accreditation status.

2243.8.3 Investigations.

The Secretary may conduct any investigations of a school ~~deemed~~ that the Secretary deems to be necessary and appropriate in order to ~~insure~~ ensure compliance with the terms of these ~~regulations~~ rules.

A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

2243.8.4 Loss of Recognition for Accreditor.

~~(a)~~ In the event an accrediting entity is no longer recognized by the U.S. Department of Education, any post-secondary school having received accreditation from such entity shall:

~~(a) Notify the State Board of Education in writing within 30 days of receiving notice or information of such loss of recognition;~~

~~(a)~~ ~~(b)~~

(1) Notify the State Board in writing within 30 days of receiving notice or information of such loss of recognition.

~~(1)(2)~~ Apply for accreditation with a recognized accreditor at least 90 days before the school's existing accreditation expires.

(b) The post-secondary school may continue to operate under its approval by the State Board pending receipt of its new accreditation, but in no case longer than 24 months. The State Board may extend this period upon request of a post-secondary school going through the accreditation process.

Section 2250 Preservation of Post-Secondary Institutions' Student Records.

2250.1

Statutory Authority:

16 V.S.A., § 175.

2250.1 General.

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board of Education. ~~The State Agency of Education is authorized to insure~~ that the student academic records are in appropriate form. The institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2 Maintenance of Academic Records.

Each institution of higher education operating in this ~~state~~ State shall maintain its permanent records in such a manner that they could be delivered to the State Board ~~of Education~~ in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

2250.2.1 Monitoring.

Upon reasonable notice, every institution shall make available to a representative of the State Board of ~~Education~~ its student records for the purpose of ensuring compliance with this ~~regulation~~ rule.

Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

2250.2.2 Return of Records.

A repository may duplicate the records of an institution and then return the original records to the institution.

2250.2.3 Institutions Discontinued Prior to April 25, 1979.

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A., § 175 and these ~~rules~~ regulations.

2250.3 Form and Contents of Academic Records.

The permanent academic record of each student registered for credit at a post-secondary institution ~~that~~ which operates in this ~~State~~, whether or not such institution is chartered in this ~~state~~ State, shall contain at a minimum:

- (a) ~~(a)~~ The identification of the institution.
- (b) ~~(b)~~ The identification of the student.
- (c) ~~(c)~~ The record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress.
- (d) ~~(d)~~ Periods of enrollment covered by subsection ~~paragraph~~ (c) above.
- (e) ~~(e)~~ The student's status at the close of the last period of enrollment. ~~and~~
- (f) ~~(f)~~ The degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

[Section 2260 to 2265 Repealed by Operation of Law.]

Section 2266 Post-sSecondary, Online, or Correspondence Schools.

An online or correspondence school ~~which~~ that offers post-secondary credits or degree(s) shall also meet the applicable requirements of 16 V.S.A. §§ 176 and 176a ~~of Title 16~~.

KINDERGARTENS

Section 2270 Private Kindergarten Approval.

Statutory Authority:

16 V.S.A. ~~Section §~~ 166(b).

Section 2271 Procedure for Approval.

2271.1 Application:

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the ~~Commissioner~~ Secretary of Education.

*An application for approval shall contain the following:

(a) ~~The n~~ * Name and address of the school.

(a) ~~;~~ A description of the school's curriculum and methods of instruction.;

(b)

(b) * A description of the school's physical facilities.;

(c)

(c) * A list of the school's staff and their qualifications.;

(d)

(e) * The operating schedule of the school; and

(d)(f) A statement certifying that the school is in compliance with the Kindergarten Nursery School provisions in the Regulations for Day Care of the ~~Department for Children and Families~~ Social and Rehabilitation Services Department. (hereinafter "DS.CR.FS. Kindergarten Regulations").

2271.2 Appointment of Reviewer:

Upon receipt of an application for approval, the ~~Commissioner~~ Secretary shall appoint an educator to review the application and visit the school. In addition, the ~~commissioner~~ Secretary shall contact DS.CR.FS. to determine on his or her behalf whether the school meets the "DS.CR.FS. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

2271.3 Review:

The appointed educator shall review the application and visit the school.

2271.4 Report to the ~~Commissioner~~ Secretary:

The appointed educator shall present a written report including a recommendation regarding approval to the ~~Commissioner~~ Secretary. The report of the appointed educator shall incorporate the determination of DS.CR.FS. concerning compliance with the "DS.CR.FS. Kindergarten Regulations". A copy of the report and recommendation shall be provided at the same time to the applicant.

2271.5 ~~Board~~ Secretary's Recommendation.

The ~~commissioner~~ Secretary shall recommend approval or disapproval for action by the State Board at ~~their~~ its next regular meeting. Officials of the kindergarten shall be notified of this meeting date.

Section 2272 Criteria for Approval.

The State Board shall approve a private kindergarten if it finds that:

(a) ~~2272.1~~ The curriculum embodies a minimum course of study, as defined in 16 V.S.A. ~~Section 5~~ 906-, Courses of Study, with learning experiences adapted to a ~~pupil's~~ student's age and ability.

(b) ~~2272.2~~ The school is in compliance with State requirements pertaining to the health and safety of ~~pupils~~ students adopted by the Department of Labor and Industry and the Department of

Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)

- (c) ~~2272.3~~ The director and teachers in the kindergarten are qualified through training or experience in:
- (1) ~~S~~-structuring kindergarten learning environments ~~that~~ which enhance cognitive and social development;
 - (1)
 - (2) ~~T~~-teaching skills and concepts in mathematics, language arts, science, the arts, and health ~~that~~ which are consistent with principles of child development;
 - (3) ~~P~~-planning and leading activities that foster social and emotional growth in young children;
 - (4) ~~D~~-dealing with parents and family of children to ensure home support and to promote learning outside of the school or center; ~~and~~
 - (5) ~~I~~-identifying developmental delays in young children.
- (d) ~~2272.4~~ The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours ~~which~~ that is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).
- (e) ~~2272.5~~ The facility and program meet the "DS.CR.FS. Kindergarten Regulations."

Section 2273 Additional Requirements.

2273.1 Records.

Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with ~~s~~State and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

2273.2 Professional Development.

The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

Section 2274 Term of Approval.

The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

Section 2275 ~~Denial~~, ~~Revocation~~, or Suspension of Approval.

Prior to recommending ~~denial~~, ~~revocation~~, or suspension of approval to the State Board, the ~~commissioner~~ Secretary shall notify the kindergarten of the reasons for the proposed action and shall afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be

revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.

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Rule 2200 INDEPENDENT SCHOOL PROGRAM APPROVAL

Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).

Section 2220 Statement of Purpose.

The purpose of independent school approval rules is to assure effective, available, and equitable educational opportunities for students enrolled in Vermont's independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018.

Section 2221 Statutory Authority.

16 V.S.A. §§ 166, 2958(e), and 2973.

Section 2222 Definitions.

Agency: means the Vermont Agency of Education.

Approved Independent School: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds) and SBE Rule 2226 (Application).

Approved Independent School Ineligible to Receive Public Funds: means an independent school that meets the requirements in SBE Rules 2226 (Application) and 2227 (Approval) but does not meet the requirements of rules concerning the delivery of special education services in SBE Rule 2229.

Board (or State Board or SBE): means the Vermont State Board of Education.

Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.

Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or 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 an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.

Recognized Independent School: means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.

Secretary: means the Secretary of the Vermont Agency of Education.

Special Education Fees: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

Special Education Services: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12.

Student: means a person age three through age twenty-one.

Student who requires additional support: means a student who meets the criteria defined in 16 V.S.A. § 2942(8).

Tuition: means funds paid by a school district to an approved independent school for general education in accordance with SBE Rule 2225.

Section 2223 Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary. An application shall meet the requirements of SBE Rule 2226(Application).

Upon receipt of an application for initial approval or renewal of approval, the Secretary shall appoint a review committee of at least two persons.

2223.1 Visit.

The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities.

2223.2 Report.

The committee shall write a report, including a written initial recommendation regarding approval, to the Secretary. A copy of the initial recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the State Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

2223.3 General Conditions for Approval.

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, including Rule 2226 and Rule 2227. Effective July 1, 2023, an independent school that intends to accept public tuition must also meet the requirements of SBE Rule 2229. Effective July 1, 2023, a school meeting approval requirements in SBE Rules 2226 (Application) and 2227 (Approval) but

not Rule 2229 (Approval to Receive Public Tuition, Special Education Approval) may be recommended for approval but may not receive public tuition.

2223.4 Review.

The Secretary shall designate a date for action by the Board. Officials of the school shall be notified of this date.

2223.5 Renewal.

Not less than six months prior to expiration of a school's approval, the Secretary shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received from the school not later than 30 days prior to the scheduled site visit.

2223.6 Extension.

Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

2223.7 Termination.

Approval of an independent school that fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

2223.8 Revocation or Suspension of Approval.

Prior to recommending revocation or suspension of approval, the Secretary shall initiate a formal investigation pursuant to rule 2223.9 (Complaints; Investigations). Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion on the same. If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the State Board of the recommendation and provide notice to the school. The State Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

- (a) After providing an opportunity for hearing, the Board may revoke, suspend, or impose conditions on the approval of an approved independent school for:
 - (1) Failure to demonstrate that the school has the resources required to meet its stated objectives;
 - (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools;
 - (3) Failure to report any of the financial events listed in (b) below; or
 - (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).
- (b) An approved independent school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:
 - (1) The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;

- (2) The school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
 - (3) The school's failure to maintain required retirement contributions;
 - (4) The school's use of designated funds for nondesignated purposes;
 - (5) 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;
 - (6) The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
 - (7) The school's insolvency as defined in 9 V.S.A. § 2286(a).
- (c) If the State Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. § 166(b)(8)(B).
 - (d) If the State Board, after having provided the school a reasonable opportunity to respond to the Board's notification, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the Board may establish a review team that, with the consent of the school, includes a member of the Council of Independent Schools, to:
 - (1) Conduct a school visit to assess the school's financial capacity;
 - (2) Obtain from the school such financial documentation as the review team requires to perform its assessment; and
 - (3) Submit a report of its findings and recommendations to the State Board.
 - (e) 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.
 - (f) 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.
 - (g) Information provided by a school under this section 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 according to 16 V.S.A. § 166(b)(8).

2223.9 Complaints; Investigations.

- (a) The Secretary shall conduct an initial investigation of reports or complaints related to the approval standards and laws that apply to approved independent schools. If, following an initial investigation, the Secretary finds a violation of approval standards or laws that apply to approved independent schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved independent school on probation.
- (b) At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation.

- (c) An approved independent school may appeal the imposition of probation to the State Board by requesting a hearing as provided above.
- (d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.
- (e) Formal Investigations
 - (1) The school shall receive notification of the complaint unless contraindicated by the particular facts.
 - (2) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons including a member of the Council of Independent Schools. The team will conduct the investigation and will inform the Secretary and the school of the results. The process in SBE Rule 2223.8 shall then apply.
 - (3) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.

Section 2224 Reciprocity for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. In addition to the accrediting agencies listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England and the New England Association of Schools and Colleges. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Agency by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the approval process. A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency within five days of a change to its accreditation.

Section 2225 Tuition from Public Funds.

2225.1 Tuition for Independent Schools in Vermont.

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in SBE Rule 2226 (Application), SBE Rule 2227 (Approval), and SBE Rule 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

- (a) There is an order from a court or from a due process hearing pursuant to SBE Rule 2365.1.6 requiring such payment, or
- (b) The Secretary has approved an exception for a placement in an independent school pursuant to SBE Rule 2230.1.

2225.2 Tuition for Out of State Schools

Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828..

Section 2226 Application for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

An application for initial approval or renewal of approval shall contain the following:

2226.1 The name and address of the school.

2226.2 A statement of the school's philosophy and purpose.

2226.3 A description of the school enrollment including a statement of how it is designed to serve children with disabilities.

2226.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

2226.5 A description of the curriculum, methods of instruction, evaluation procedures and special services that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A. § 906.

2226.6 Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following:

(1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 141 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 495.

(2) An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.

(3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements.

2226.7 Evidence of compliance with local, State, and federal requirements pertaining to the health and safety of students.

2226.8 Statements regarding professional staff including:

2226.8.1 Professional Staff qualifications.

(1) A job description for each position or a statement describing training, experience, and degree(s) required for each position.

(2) A resume, vita, or description of appropriate qualifications for each current staff member.

(3) Current assignment of each professional staff member.

2226.8.2 Professional Staff Development.

(1) A general statement of the institution's expectations for professional growth of staff.

(2) A statement describing the school's inservice training and financial and other support given to staff for professional development.

(3) A description of professional development in the prior two years.

2226-8.3 Professional Environment.

- (1) A list of staff and length of service.
- (2) A description of staff meetings.
- (3) A description of other staff duties that are not related to teaching or administration duties.

2226.9 Evidence of financial capacity, which may be shown by 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.

2226.10 The school calendar.

2226.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A. § 166(b)(3).

Section 2227 Approval of Application.

The 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 16 V.S.A. § 906 and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The Board shall make the following findings prior to approval:

2227.1 The description of the school in the approval application is accurate.

2227.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

2227.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.

2227.4 The school has classroom, laboratory, library, and other facilities necessary to operate its program.

2227.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

2227.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

2227.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2227.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

2227.7 The school employs a sufficient number of professional staff for the population served.

2227.8 The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease.

2227.9 The school maintains a register of the daily attendance of each of its enrolled students.

2227.10 The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades.

2227.11 The school has the financial capacity to carry out its stated objectives for the period of approval. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

2227.12 The school complies with the requirements of 16 V.S.A. § 255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry.

2227.13 The school complies with legal requirements concerning nondiscriminatory school branding.

2227.14 The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure.

Section 2228 Length of Approval.

The State Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

Section 2229 Approval to Receive Public Tuition, Special Education Approval.

2229.1 Enrollment: Requirements for Approved Independent Schools, Students, and LEAs.

a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:

- 1) That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;
- 2) Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;
- 3) The school's process for making enrollment decisions when the number of applicants exceeds capacity;

4) That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or State law.

b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in 2229.4, after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in Rule 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Rule 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to subsection Rule 2229.4(f), below.

d) This Rule, 2229.1, shall not apply to a therapeutic independent school.

2229.2 Staffing.

An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve.

The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

2229.3 Assurances.

The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:

- (a) Demonstrating an understanding of special education requirements, including:
 - (1) Provision of a free and appropriate public education in accordance with federal and State law.
 - (2) Provision of education in the least restrictive environment in accordance with federal and State law.
 - (3) Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law.

- (4) Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.
- (b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress.
- (c) Employing or contracting with staff who have the required licensure to provide special education services.
- (d) Agreeing to communicate with the responsible LEA concerning:
 - (1) Development of, and any changes to, the IEP.
 - (2) Services provided under the IEP and recommendations for a change in the services provided.
 - (3) The student's progress.
 - (4) Maintenance of the student's enrollment in the independent school.
 - (5) Identification of students with suspected disabilities.
- (e) Committing to participate in dispute resolution as provided under federal and State law.

2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools.

a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.

b) The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with State and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the State Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.

c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding SBE Rule 2354.3(a)(2). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.

d) The student's special education and related services shall be provided in the least restrictive environment.

e. To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:

- 1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;

2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school.

3. The approved independent school contracting with the LEA to provide the services.

4. The LEA providing the services at a public school operated by the LEA or another public school.

f. If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.

g. If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Rule 2223.8 due to its failure to enroll or continue to enroll the student.

h. This Rule, 2229.4, shall not apply to a therapeutic independent school.

2229.5 Out-of-State Programs.

- (a) Unless otherwise determined by the Board, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.
- (b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.

2229.6 Approval Procedures to Receive Public Funds.

- (a) Application for public funds approval shall be made at the time of application under SBE Rule 2223 et seq. An independent school that has already obtained independent school approval from the Board may at any time submit an application for public tuition approval to the Secretary.
- (b) Application for special education funding approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.
- (c) The procedures for public tuition approval shall be the same as those for approval in accordance with SBE Rule 2223 et seq. To the extent possible, these procedures shall occur simultaneously.

2229.7 Notification.

After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board under Rule 2223.8 for a change to a school's approval status, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the Board. If the school disagrees with the proposed change to its approval status, the Board shall hear the matter in accordance with the requirements of SBE Rule 1230, et seq.

2229.8 Minimum Level of Service.

Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973, if those services are offered according to a written agreement with the sending responsible agency, as required by SBE Rule 2231.

Section 2230 Placement Prohibition.

No responsible agency, as defined by SBE Rule 2360.3, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Rule 2229, unless the placement is pursuant to:

- (a) Rule 2230.1;
- (b) A court order; or
- (c) A hearing officer's order.

2230.1 Exceptional Circumstances - Approval Process.

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to SBE Rule 2223, et seq. but that has not been approved to receive public tuition under Rule 2229. In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the State Board pursuant to 16 V.S.A. § 828.

- (a) Exceptional circumstances exist when:
 - (1) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to SBE Rule 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and
 - (2) The proposed placement is deemed appropriate by the child's IEP team.
- (b) The Secretary may specify conditions under which the placement is to be carried out.

Section 2231 Written Agreements Required.**2231.1 Agreement as to Costs.**

- (a) In order to obtain approval to receive public tuition, an independent school shall assure the State Board that, prior to enrolling a child pursuant to Rule 2229.1, the school will enter into a written agreement with the LEA committing to the requirements set forth in SBE Rule 2229.3 and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948, the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.
- (b) The Secretary shall consult with independent schools in the State and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.
- (c) An approved independent school that enrolls a student with an IEP pursuant to Rule 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.
- (d) An approved independent school that enrolls a student under SBE Rule 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

2231.2 Agreement as to Non-Instructional Services.

In order to obtain approval to receive public tuition, an independent school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.

Section 2232 Rate Approval for Therapeutic Approved Independent Schools.

- (a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.
- (b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any

time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.

- (c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.
- (d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:
 - (1) Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:
 - (A) Salaries for all employees and full-time equivalents as applicable
 - (B) Program-related Contractual Services
 - (C) Operations-related Contractual Services
 - (D) General Operating
 - (E) Program
 - (F) Travel/Transportation
 - (G) Building – Direct
 - (H) Building – Allocated
 - (I) Admin I – Allocated
 - (J) Admin II – Allocated
 - (K) Fringe – Allocated
 - (2) The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.
- (e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.
- (f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.
- (g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the

school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:

- (1) Establish standards for developing and applying a database of comparable information to be utilized in rate determinations, and publish the standards on the Agency's website.
 - (2) Annually update the database of comparable information.
 - (3) Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.
- (h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).
- (i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.
- (j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.
- (k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the State Board in accordance with the requirements of SBE Rule 1230, et seq. Alternatively, a therapeutic school may appeal to the State Board pursuant to SBE Rule 1230, et seq. without first seeking reconsideration by the Secretary. The State Board's determination of the appeal shall be final.

2233 Standards and Regulations.

The State Board shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

CORRECTIONS PROGRAMS

Section 2234 Corrections Education Program.

The Secretary shall conduct a review of the Corrections Education Program in accordance with the procedures and standards contained within SBE Rules 2220 through 2229.

TUTORIAL PROGRAMS

Section 2235 Approval of Tutorial Programs.

Statutory authority: 16 V.S.A. § 828.

2235.1 Definitions.

"Tutorial program" means education provided to a student who is placed in a short-term program that is not administered by an LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. § 166. The average length of stay for children in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.

2235.2 Procedures for Approval

2235.2.1 Application.

An application for approval or renewal of approval as a tutorial program shall include the following:

- (a) Name, address, telephone number of the tutorial program.
- (b) Name of the Chief Executive Officer or contact person.
- (c) A statement of the tutorial program's purpose and objectives.
- (d) A description of the tutorial program's enrollment, including a statement of whom it is designed to serve.
- (e) A description of the plan of organization for the tutorial program.
- (f) A tutorial program calendar.

2235.2.2 Review.

Upon receipt of an application for approval, the Secretary shall appoint a committee of at least two persons to review the application and visit the tutorial program.

2235.2.3 Report to the Secretary.

The appointed committee shall present a written recommendation regarding possible approval to the Secretary. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Secretary to the State Board.

2235.2.4 Board Action.

The Secretary shall recommend approval or disapproval for action by the State Board at its next regular meeting. Officials of the tutorial program shall be notified of this meeting date.

2235.2.5 Term of Approval.

The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.

2235.2.6 Renewal.

Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when a site visit will occur. The completed

application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.

2235.2.7 Denial, Revocation, or Suspension of Approval.

Prior to recommending denial, revocation, or suspension of approval to the State Board, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

2235.2.8 Standards and Regulations.

The State Board shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

2235.3 Criteria for Approval.

In order for a tutorial program to obtain approval or renewal of approval from the State Board, the program shall meet both the general and special education requirements in the following areas:

- (a) The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in subsection (j) below.
- (b) The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- (c) The tutorial program's facilities and operation comply with local, State, and federal requirements pertaining to the health and safety of children.
- (d) The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas to which they are assigned.
- (e) Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- (f) All professional staff have relevant experience and/or training in the duties to which they are assigned.
- (g) The tutorial program maintains a register of the daily attendance of each of its students and reports the attendance to the responsible LEA.
- (h) The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.
- (i) The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- (j) The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school, and coordinates with other responsible agencies such as the Department for Children and Families, community mental health centers, and family-parent child centers by:

- (1) Contacting the responsible LEA(s) (see 16 V.S.A. § 1075) in order to access school records and determine the special education status of the child.
 - (2) Reviewing the IEP, the child's needs, and the tutorial's own ability to implement the IEP.
 - (3) Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, the child is suspected of having a disability.
 - (4) Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order, or other legally binding document specifically revoking those rights.
 - (5) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services.
 - (6) Implementing IEPs.
 - (7) Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.
- (k) In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least each of the following areas:
- (1) Admissions.
 - (2) Discipline.
 - (3) Significant change in placement.

2235.4 Rate Approval for Non-Residential Tutorial Programs.

- (a) Each tutorial program shall annually report its rates for tuition, related services, and room and board, if applicable, to the Secretary on a form prescribed for that purpose.
- (b) The rates that a tutorial program charges for tuition, related services, and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.
- (c) The Secretary shall review each tutorial program's annual rate report. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public school districts and the Agency would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory, the Secretary shall refer the matter to the State Board.
 - (1) Upon such referral by the Secretary, the State Board shall conduct a formal proceeding in accordance with the requirements of SBE Rule 1230, et seq.
 - (2) The State Board's determination shall be final.

DISTANCE LEARNING SCHOOLS

Section 2236 Approval of Distance Learning Schools.

Section 2237 Statutory Authority.

16 V.S.A. § 166(b)(6).

Section 2238 Definition.

A "Distance Learning School" means an independent school that offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means and that, because of its structure, does not meet some or all the rules of the State Board for approved independent schools and is ineligible to receive public tuition payments pursuant to 16 V.S.A. § 166(b)(6).

Section 2239 Procedures and Standards.

The distance learning school shall meet the procedures and standards set forth in Rules 2220-2228 above that, because of its structure, can be applied, and the following rules:

- (a) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (b) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of the Vermont Statutes Annotated.
- (c) The distance learning school offers an educational program that is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.
- (d) The distance learning school has policies and procedures to:
 - (1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program.
 - (2) Measure student progress to ensure that students continue to benefit from such instruction.
- (e) The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.
- (f) The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.
- (g) Tuition:
 - (1) Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from school districts pursuant to 16 V.S.A. § 166(b)(6).
 - (2) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.
- (h) In the event that the school closes, the distance learning school has policies for:
 - (1) Tuition adjustment or refund.
 - (2) Preservation and release of student records.

POST-SECONDARY SCHOOLS

Section 2240 Certification of Post-Secondary Schools.

2240.1 Definitions.

- (a) "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.
- (b) "A post-secondary school whose primary operation is in the State of Vermont" means a post-secondary school that offers the majority of its courses in an institution in Vermont or that maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.
- (c) "Confer a degree" and "degree-granting authority" means the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school that offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.
- (d) "Business organization", for the purposes of 16 V.S.A. § 176(d)(1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

Section 2241 Certification of Post-Secondary Schools Chartered in Vermont.

2241.1 Statutory Authority.

16 V.S.A. § 176.

2241.2 [Repealed].

2241.3 Application for Certificate of Approval.

A person desiring a certificate of approval or certificate of degree-granting authority from the State Board shall file an application with the Secretary prior to offering post-secondary credit-bearing courses or programs and prior to admitting its first student. The application shall indicate the certification sought and shall include a description of the school that contains the following:

- (a) The name, location and legal nature of the school, including a copy of the articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) that the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school, including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.

- (h) A description of the school's physical plant, library, and equipment.
- (i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.
- (j) A statement regarding the school's professional staff, including its policies regarding appointment, promotion, tenure (if applicable), dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) The official website address, a copy of all catalogues or brochures publicly distributed by the school, and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.
- (n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

Section 2242 Certification of Post-Secondary Schools Not Chartered in Vermont.

2242.1 Statutory Authority.

16 V.S.A. § 176a.

2242.2 Application for Certificate of Approval.

A person desiring a certificate of approval from the State Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under SBE Rule 2240.1, subsection (c). The application shall include a description of the school that contains the following:

- (a) The name, location, and legal nature of the school, including a copy of articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) that the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's physical plant, library, and equipment.

- (i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.
- (j) A statement regarding the school's professional staff, including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.
- (n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.
- (o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.
- (p) Documentation of accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education.

2242.3 Registration.

A post-secondary school seeking continued operation in Vermont after initial approval from the State Board shall register with the Agency within one-year of receiving approval from the State Board and annually thereafter on or before September 1. Registration shall be on a form prescribed by the Secretary.

Section 2243 Review Process for Post-Secondary Schools Chartered In and Outside Vermont.

2243.1 Review of Application for Certificate of Approval for Schools Chartered In and Outside Vermont.

Upon receipt of an application for a certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents by, if necessary, visiting the school. The team shall present a written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of the recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board.

2243.2 Review of Application for Certificate of Degree Granting Authority.

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of SBE Rule 2243.6, subsection (a) are met, the Secretary shall contact the Vermont Higher Education Council, which shall review the application and determine the accuracy of its contents by, if necessary, visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Vermont Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board. The State Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

2243.3 Renewal of Certification.

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification. Any school seeking renewal that has obtained initial approval to offer or operate a program of college or professional education for credit or degree on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the U.S. Department of Education, in order to be considered eligible for renewal by the State Board within the first 10 years of operation.

2243.4 Costs of Review.

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 V.S.A. § 177 to the Agency to cover the costs of services related to the certification. In addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and, lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 V.S.A. § 177 to the Agency, a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food, and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

2243.5 Criteria for Issuance of a Certificate of Approval.

To be issued a certificate of approval, an applicant shall demonstrate the following:

2243.5.1 Resources Required to Meet Stated Purposes.

The school shall submit a clear and specific statement of purpose regarding the education that it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

2243.5.2 Stability.

- (a) Sources of Income. The school shall have a plan for financing each proposed degree or program. The plan shall specify the dollar amounts and proportions of income by source, including:
 - (1) Tuition and fees.
 - (2) Other school-generated funds.
 - (3) Federal or State funds.
 - (4) Private funds.
- (b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.
- (c) Management. The school shall operate under a governing structure that clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

2243.5.3 Disclosure.

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission, or transfer of credit. The following information shall be disclosed on the school's website and in a general catalogue, bulletin, or other public information document provided to prospective students prior to enrollment.

- (a) Name and physical address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.
- (f) An accurate list of all educational activities.
- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks, or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.

- (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.
- (m) Requirements for graduation.
- (n) A statement of the certificates or diplomas awarded upon graduation, if any.
- (o) A statement of the degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.
- (p) The system of grading or evaluation.
- (q) The school's policy establishing standards for determining adequate progress.
- (r) The availability and extent of student services such as job placement services, counseling for academic and personal problems, food service facilities, and parking facilities.
- (s) The availability of financial aid.
- (t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, State Veteran's Affairs-approving agency course approval, and State certification.
- (u) The school's policy regarding the refund of tuition and other fees collected in advance of enrollment or class attendance.
- (v) The school's "closing" policy establishing procedures that will be followed in the event that a determination is made to cease operation.
- (w) The school's student records policy with provisions regarding access, disclosure, and the cost of copies.
- (x) A statement that credits earned at the school are transferable only at the discretion of the receiving school.

2243.5.4 Facilities.

The school's facilities shall meet all applicable State, federal and local fire, safety, health, and access standards.

2243.5.5 Student Records.

The school shall have adequate procedures for the safe-keeping of student records and for complying with the requirements of 16 V.S.A. § 175.

2243.5.6 Waiver of Requirements for Certification.

A school that believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

2243.6 Criteria for Issuance of a Certificate of Degree Granting Authority.

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

- (a) Schools desiring to offer post-secondary degrees, including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met.
- (b) Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences.
- (c) Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences.
- (d) Candidates for a degree shall be required to complete a coherent program of study.

2243.7 Certification Limitations.

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms, or limitations as the Board deems necessary. A school that has been granted either a certificate of approval or a certificate of degree granting authority shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State Board may require a school to reapply for certification following program changes that are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

2243.8 Denial, Approval with Stipulations, Revocation, or Suspension of Certification.

2243.8.1 Process.

Prior to recommending denial, approval with stipulations, revocation, or suspension of certification to the State Board, the Secretary shall notify the school in writing of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or the Secretary's designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

2243.8.2 Criteria for Revocation or Suspension.

The Board may suspend or revoke certification for good cause, including:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet the terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation.
- (g) Refusal to permit team evaluation or other investigations provided for under these rules.
- (h) Change in accreditation status.

2243.8.3 Investigations.

The Secretary may conduct any investigations of a school that the Secretary deems to be necessary and appropriate in order to ensure compliance with the terms of these rules. A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

2243.8.4 Loss of Recognition for Accreditor.

- (a) In the event an accrediting entity is no longer recognized by the U.S. Department of Education, any post-secondary school having received accreditation from such entity shall:
 - (1) Notify the State Board in writing within 30 days of receiving notice or information of such loss of recognition.
 - (2) Apply for accreditation with a recognized accreditor at least 90 days before the school's existing accreditation expires.
- (b) The post-secondary school may continue to operate under its approval by the State Board pending receipt of its new accreditation, but in no case longer than 24 months. The State Board may extend this period upon request of a post-secondary school going through the accreditation process.

Section 2250 Preservation of Post-Secondary Institutions' Student Records.

Statutory Authority: 16 V.S.A. § 175.

2250.1 General.

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board. The Agency is authorized to ensure that the student academic records are in appropriate form. The institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2 Maintenance of Academic Records.

Each institution of higher education operating in this State shall maintain its permanent records in such a manner that they could be delivered to the State Board in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

2250.2.1 Monitoring.

Upon reasonable notice, every institution shall make available to a representative of the State Board its student records for the purpose of ensuring compliance with this rule. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

2250.2.2 Return of Records.

A repository may duplicate the records of an institution and then return the original records to the institution.

2250.2.3 Institutions Discontinued Prior to April 25, 1979.

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A. § 175 and these rules.

2250.3 Form and Contents of Academic Records.

The permanent academic record of each student registered for credit at a post-secondary institution that operates in this State, whether or not such institution is chartered in this State, shall contain at a minimum:

- (a) The identification of the institution.
- (b) The identification of the student.
- (c) The record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress.
- (d) Periods of enrollment covered by subsection (c) above.
- (e) The student's status at the close of the last period of enrollment.
- (f) The degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

[Section 2260 to 2265 Repealed by Operation of Law.]

Section 2266 Post-Secondary Online or Correspondence Schools.

An online or correspondence school that offers post-secondary credits or degrees shall also meet the applicable requirements of 16 V.S.A. §§ 176 and 176a.

KINDERGARTENS

Section 2270 Private Kindergarten Approval.

Statutory Authority: 16 V.S.A. § 166(b).

Section 2271 Procedure for Approval.

2271.1 Application:

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Secretary. An application for approval shall contain the following:

- (a) The name and address of the school.
- (b) A description of the school's curriculum and methods of instruction.
- (c) A description of the school's physical facilities.
- (d) A list of the school's staff and their qualifications.
- (e) The operating schedule of the school
- (f) A statement certifying that the school is in compliance with the Kindergarten Nursery School provisions in the Regulations for Day Care of the Department for Children and Families. (hereinafter "D.C.F. Kindergarten Regulations").

2271.2 Appointment of Reviewer

Upon receipt of an application for approval, the Secretary shall appoint an educator to review the application and visit the school. In addition, the Secretary shall contact D.C.F. to determine on his or her behalf whether the school meets the "D.C.F. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

2271.3 Review.

The appointed educator shall review the application and visit the school.

2271.4 Report to the Secretary.

The appointed educator shall present a written report including a recommendation regarding approval to the Secretary. The report of the appointed educator shall incorporate the determination of D.C.F. concerning compliance with the "D.C.F. Kindergarten Regulations". A copy of the report and recommendation shall be provided at the same time to the applicant.

2271.5 Secretary's Recommendation.

The Secretary shall recommend approval or disapproval for action by the State Board at its next regular meeting. Officials of the kindergarten shall be notified of this meeting date.

Section 2272 Criteria for Approval.

The State Board shall approve a private kindergarten if it finds that:

- (a) The curriculum embodies a minimum course of study, as defined in 16 V.S.A. § 906, Courses of Study, with learning experiences adapted to a student's age and ability.
- (b) The school is in compliance with State requirements pertaining to the health and safety of students adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)
- (c) The director and teachers in the kindergarten are qualified through training or experience in:
 - (1) Structuring kindergarten learning environments that enhance cognitive and social development.
 - (2) Teaching skills and concepts in mathematics, language arts, science, the arts, and health that are consistent with principles of child development.
 - (3) Planning and leading activities that foster social and emotional growth in young children.
 - (4) Dealing with parents and family of children to ensure home support and to promote learning outside of the school or center.
 - (5) Identifying developmental delays in young children.
- (d) The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours that is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).
- (e) The facility and program meet the "D.C.F. Kindergarten Regulations."

Section 2273 Additional Requirements.

2273.1 Records.

Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with State and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

2273.2 Professional Development.

The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

Section 2274 Term of Approval.

The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

Section 2275 Revocation or Suspension of Approval.

Prior to recommending revocation or suspension of approval to the State Board, the Secretary shall notify the kindergarten of the reasons for the proposed action and shall afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.

The Vermont Statutes Online

Title 16 : Education

Chapter 003 : State Board Of Education

Subchapter 001 : General Provisions

(Cite as: 16 V.S.A. § 164)

§ 164. State Board; general powers and duties

The State Board shall engage local school board members and the broader education community and, consistent with the provisions of this title, its own rules, and rules adopted by the Secretary, establish and regularly update a long-term strategic vision for the delivery of educational services in Vermont; advise the General Assembly, the Governor, and the Secretary of Education on high-priority educational policies and issues as they arise; and act in accordance with legislative mandates, including the adoption of rules and executing special assignments. In addition to other specified duties, the Board shall:

(1) Establish such advisory commissions as in the judgment of the Board will be of assistance to it in carrying out its duties. Advisory commission members shall serve with or without compensation at the discretion of the Board but shall receive actual expenses incurred in pursuance of their duties.

(2) Have the authority to enter into agreements with school districts, municipalities, states, the United States, foundations, agencies, or individuals for service, educational programs, or research projects.

(3) Examine and determine all appeals that by law are made to it and prescribe rules of practice in respect thereto, not inconsistent with law.

(4) [Repealed.]

(5) [Repealed.]

(6) Make regulations governing the attendance and records of attendance of all students and the department of students attending public schools.

(7) 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.

(8) [Repealed.]

(9) Implement and continually update standards for student performance in appropriate content areas and at appropriate intervals in the continuum from kindergarten to grade 12 and methods of assessment to determine attainment of the standards for student performance. The standards shall be rigorous, challenging, and designed to prepare students to participate in and contribute to the democratic process and to compete in the global marketplace. The standards shall include a standard for reading level proficiency for students completing grade three.

(10) [Repealed.]

(11) If deemed advisable, determine educational standards for admission to and graduation from the public schools.

(12) [Repealed.]

(13) Be the State Board for the program of adult education and literacy and perform all the duties and powers prescribed by law pertaining to adult education and literacy and to act as the State approval agency for educational institutions conducting programs of adult education and literacy.

(14) Adopt rules for approval of independent schools.

(15) Establish criteria governing the establishment of a system for the receipt, deposit, accounting, and disbursement of all funds by supervisory unions and school districts.

(16) In cooperation with the Secretary, ensure that the Agency develops information, plans, and assistance to aid in making technology and telecommunications available and coordinated in all school districts. The State Board shall develop guidelines for distribution of federal, State, or private funds designated for the development or expansion of distance learning technologies. The guidelines shall encourage, consistent with any terms or conditions established by the funding source, collaboration between schools and school districts to realize economic and educational efficiencies.

(17) Report annually on the condition of education statewide and on a supervisory union and school district basis. The report shall include information on attainment of standards for student performance adopted under subdivision (9) of this section, number and types of complaints of hazing, harassment, or bullying made pursuant to chapter 9, subchapter 5 of this title and responses to the complaints, financial resources and expenditures, and community social indicators. The report shall be organized and presented in a way that is easily understandable by the general public and that enables each school, school district, and supervisory union to determine its strengths and weaknesses. To the extent consistent with State and federal privacy laws and regulations, data on hazing, harassment, or bullying incidents shall be disaggregated by incident type, including disaggregation by ethnic groups, racial groups, religious groups, gender, sexual orientation, gender identity, disability status, and English language

learner status. The Secretary shall use the information in the report to determine whether students in each school, school district, and supervisory union are provided educational opportunities substantially equal to those provided in other schools, school districts, and supervisory unions pursuant to subsection 165(b) of this title.

(18) Ensure that Vermont's students, including students enrolled in secondary career technical education, have access to a substantially equal educational opportunity by developing a system to evaluate the equalizing effects of Vermont's education finance system and education quality standards under section 165 of this title.

(19) [Repealed.]

(20) Pursuant to section 806g of this title, constitute the State Council for the Interstate Compact on Educational Opportunity for Military Children and appoint to the Council a Compact Commissioner and Military Family Education Liaison, who may be the same person. The Board may appoint additional members.

(21) Report annually to the Governor and the General Assembly on the progress the Board has made on the development of education policy for the State. (Added 1969, No. 298 (Adj. Sess.), § 15; amended 1971, No. 14, § 5, eff. March 11, 1971; 1975, No. 48, §§ 3, 14, eff. April 15, 1975; 1975, No. 147 (Adj. Sess.), § 3; 1981, No. 151 (Adj. Sess.), § 5; 1983, No. 247 (Adj. Sess.), § 4(1); 1983, No. 248 (Adj. Sess.), § 4; 1987, No. 97, § 4, eff. June 23, 1987; 1987, No. 228 (Adj. Sess.), § 6; 1989, No. 118, § 3; 1991, No. 24, § 11; 1991, No. 204 (Adj. Sess.), § 7; 1997, No. 60, § 3, eff. June 26, 1997; 1997, No. 138 (Adj. Sess.), § 3, eff. April 27, 1998; 1999, No. 113 (Adj. Sess.), § 1a; 1999, No. 120 (Adj. Sess.), § 3; 2001, No. 151 (Adj. Sess.), § 50, eff. July 1, 2003; 2005, No. 214 (Adj. Sess.), § 12; 2007, No. 154 (Adj. Sess.), § 6; 2011, No. 43, § 2, eff. July 1, 2011; 2011, No. 45, § 7a, eff. May 24, 2011; 2011, No. 98 (Adj. Sess.), § 4, eff. April 1, 2013; 2013, No. 56, § 22, eff. May 30, 2013; 2013, No. 92 (Adj. Sess.), §§ 8, 9, 302, eff. Feb. 14, 2014; 2013, No. 142 (Adj. Sess.), § 26; 2015, No. 23, § 18; 2015, No. 131 (Adj. Sess.), § 23; 2019, No. 1, § 2, eff. Mar. 29, 2019; 2019, No. 131 (Adj. Sess.), § 53; 2021, No. 66, § 20, eff. June 7, 2021.)

No. 173. An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.

(H.897)

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

* * * Findings * * *

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont and State Agricultural College, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

hearing officer to conduct a hearing with the parties and make a determination, which shall be final. The cost for the hearing officer shall be split evenly between the two parties.

(b)(e) Neither a school districts district nor any State agency shall pay rates for tuition, room, and board; for students receiving special education in independent schools outside Vermont that are in excess of allowable costs approved by the authorized body in the state in which the independent school is located, except in exceptional circumstances or for a child who needs exceptional services, as approved by the Secretary.

(e)(f) The State Board is authorized to enter into interstate compacts with other states to regulate rates for tuition, room, and board for students receiving special education in independent schools.

Sec. 22. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR
SPECIAL EDUCATION CATEGORIES

(a) On or before November 1, 2019, the Vermont Standards Board for Professional Educators shall review its special educator endorsement requirements and initiate rulemaking to update its rules to ensure that these requirements do not serve as a barrier to satisfying statewide demands for licensed special educators.

(b) On or before November 1, 2020, the State Board of Education shall review its rules for approving independent schools in specific special education

categories and initiate rulemaking to update its rules to simplify and expedite the approval process.

* * * Effective Dates * * *

Sec. 23. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (16 V.S.A. § 4001); and

(3) Sec. 17 (transition).

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, 2020.

(c) Secs. 20a-21 (approved independent schools) shall take effect on July 1, 2022.

(d) This section and the remaining sections shall take effect on passage.

Date Governor signed bill: May 25, 2018



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Nov 05, 2021

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	21P023
Title:	Independent School Program Approval.
Type:	Standard
Status:	Final Proposed
Agency:	Board of Education
Legal Authority:	16 V.S.A. § 164(14) and Section 22 of Act 173 of 2018 (session law), as amended by Section 8 of Act 112 of 2020 (session law).
Summary:	Act 173 of 2018 requires the State Board of Education to adopt rules implementing certain changes to the requirements an independent school must satisfy in order to receive public tuition. These

changes include enrollment of students who require special education services and provision of special education to publicly funded students. In current law, students who receive special education services may only choose an independent school that has sought and received approval for the student’s specific disability category. Act 173 and these rules implement a system that allows students who receive special education to enroll in any independent school that has been approved for public funding, if the Supervisory Union approves the placement. These rules create procedures for school districts and approved independent schools to ensure students receive special education services in conformity with federal and state law.

Persons Affected: Supervisory Unions (SUs)/School Districts/Supervisory Districts (SDs); State Board of Education; independent schools; school staff; parents; students; advocacy groups; and the Agency of Education (AOE).

Economic Impact: This rule effectuates the changes to the independent school approval standards directed by Act 173, which may have significant impacts on SUs/School Districts/SDs and independent schools. One example of a likely financial impact, detailed in the economic impact analysis, is a proposed requirement that schools with a boarding /residential program be accredited by an accreditation agency recognized by the SBE. Additionally, independent schools and SUs/School Districts/SDs may see increased costs due to providing special education services to all eligible children who attend approved independent schools through public tuition payment.

Posting date: Jul 21,2021

Hearing Information

Information for Hearing # 1

Hearing date: 08-26-2021 12:00 PM [ADD TO YOUR CALENDAR](#)

Location: Agency of Education

Address: 133 State Street, Conference Room #021

City: Montpelier

State: VT

Zip: 05620-2501

Hearing Notes: Hearings will be held virtually as well as a staffed physical location at the address above.

Information for Hearing # 2

Hearing date: 09-15-2021 4:00 PM [ADD TO YOUR CALENDAR](#)

Location: Agency of Education
 Address: 133 State Street, Conference Room #021
 City: Montpelier
 State: VT
 Zip: 05620-2501

Hearing Notes: Hearings will be held virtually as well as a staffed physical location at the address above.

Information for Hearing # 3

Hearing date: 10-20-2021 4:30 PM [ADD TO YOUR CALENDAR](#)

Location: Agency of Education
 Address: 1 National Life Drive. Davis 5, 5th Floor
 City: Montpelier
 State: VT
 Zip: 05620-2501

Hearing Notes: Hearings will be held virtually as well as a staffed physical location at the address above.

Information for Hearing # 4

Hearing date: 10-26-2021 7:00 PM [ADD TO YOUR CALENDAR](#)

Location: Agency of Education
 Address: 1 National Life Drive. Davis 5, 5th Floor
 City: Montpelier
 State: VT
 Zip: 05620-2501

Hearing Notes: Hearings will be held virtually as well as a staffed physical location at the address above.

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary
 Name: Emily Simmons
 Agency: Agency of Education
 Address: 1 National Life Drive, Davis 5

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Email: emily.simmons@vermont.gov

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

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Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPI MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS S FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

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Keyword Information

Keywords:

- Act 173
- Independent Schools
- IDEA
- Special education
- Tuition

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	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA **Date of Fax:** July 20, 2021

RE: The "Proposed State Rules " ad copy to run on **July 29, 2021**

PAGES INCLUDING THIS COVER MEMO: **2**

***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

VOSHA Subpart U, COVID 19 Emergency Temporary Standard.

Vermont Proposed Rule: 21E11

AGENCY: Department of Labor

CONCISE SUMMARY: As the current COVID 19 pandemic continues to lessen, workers providing direct health care services in the health care field remain exposed to patients with suspected or confirmed COVID 19 infection. In many cases the very people who seek treatment for COVID 19-like symptoms are those who present the greatest risk to healthcare workers. This rule seeks to continue and enhance the well- established protective measures for employees that have been learned throughout this pandemic. These measures are scientifically proven to provide an effective measure of protection, especially when used in conjunction with widespread vaccination efforts. While it is generally understood that the current pandemic is becoming less acute, it is also possible that in the fall and winter season a rise/spike could occur thus further exposing healthcare workers to this disease and its variants.

FOR FURTHER INFORMATION, CONTACT: Daniel A. Whipple, Vermont Occupational Safety and Health Administration (VOSHA), P.O. Box 488 Montpelier, VT 05601-0488 Tel: 802-828-5084 Fax: 802-828-0408 Email: dan.whipple@vermont.gov URL: <https://labor.vermont.gov/vermont-occupational-safety-and-health-administration-vosha/rules-publications/rules-regulations>.

FOR COPIES: Dirk Anderson, Vermont Department of Labor, P.O. Box 488 Montpelier, VT 05601-0488 Tel: 802-828-4391 Fax: 802-828-4046 Email: dirk.anderson@vermont.gov.

Emergency Administrative Rules for Remote Hearings for the Board of Medical Practice.

Vermont Proposed Rule: 21E12

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: The proposed rule establishes the process for the Board to conduct virtual hearings.

FOR FURTHER INFORMATION, CONTACT: David Englander, Department of Health 108 Cherry Street, Burlington, VT 05401 Tel: 802-836-7280 Fax: 802-951-1275 Email: ahs.vdhrules@vermont.gov URL:

<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Brendon Atwood, Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: ahs.vdhrules@vermont.gov.

Independent School Program Approval.

Vermont Proposed Rule: 21P023

AGENCY: Agency of Education / State Board of Education

CONCISE SUMMARY: Act 173 of 2018 requires the State Board of Education to adopt rules implementing certain changes to the requirements an independent school must satisfy in order to receive public tuition. These changes include enrollment of students who require special education services and provision of special education to publicly funded students. In current law, students who receive special education services may only choose an independent school that has sought and received approval for the student's specific disability category. Act 173 and these rules implement a system that allows students who receive special education to enroll in any independent school that has been approved for public funding, if the Supervisory Union approves the placement. These rules create procedures for school districts and approved independent schools to ensure students receive special education services in conformity with federal and state law.

FOR FURTHER INFORMATION, CONTACT: Emily Simmons, Agency of Education, 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501 Tel: 802-828-1518 Fax: 802-828-6430 Email: emily.simmons@vermont.gov
URL: <https://education.vermont.gov/state-board-councils/state-board/rulemaking>.

FOR COPIES: Judy Cutler, Agency of Education, 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501 Tel: 802-828-0079 Fax: 802-828-6430 Email: judy.cutler@vermont.gov.
