

TO: Senate Committee on Education

FROM: Oliver Olsen, Vermont State Board of Education Chair

CC: State Board of Education Members  
Dan French, Secretary of Education  
Bor Yang, Vermont Human Rights Commission

DATE: January 30, 2022

**SUBJECT: Comments on S219**

I appreciate the invitation to provide comment on S219. This memo summarizes ongoing efforts by the State Board of Education (SBE) to strengthen our regulations to ensure that all Vermonters are protected from discrimination within educational settings. As noted last week, the SBE has not discussed or taken any position on S219. My comments are instead focused on the alignment of our efforts to strengthen the standards for independent school approval, including compliance with Vermont's nondiscrimination laws, which Section 3 of most recent proposed amendment to S219<sup>1</sup> touches upon. My comments do not pertain to other sections of the bill, as they relate to issues that are the subject of litigation that the SBE and its members are a party to.

The SBE is committed to equity and excellence for all students regardless of race, gender, gender identity or expression, sexual orientation, national origin, color, disability, religion, or socioeconomic status.<sup>2</sup> This is a priority that must be met with continued focus, attention, and action whenever gaps are identified.

The SBE considers Vermont's Public Accommodation Act ("PAA", as codified in V.S.A. Chapter 139 in Title 9) as being applicable to all Vermont schools. The PAA prohibits discrimination based on "*race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person*" and requires organizations to "*provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits, and accommodations.*"<sup>3</sup>

I understand that there may be a question as to whether the PAA applies to all schools. To the extent that there is any ambiguity, I would urge your committee to update the statute to clarify that the PAA is applicable to *all* schools, without delay. Similarly, if there are questions about the applicability or scope of protections afforded by the Fair Employment Practices law, I would

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<sup>1</sup> [Senate Education Committee Proposed Amendment to S219, Draft 2.1](#)

<sup>2</sup> [SBE Statement Adopted June 17, 2020](#)

<sup>3</sup> [9 V.S.A. § 4502](#)



urge your committee to update that law to improve clarity. Protecting the civil rights of our students and the educators who support them should be always viewed as a priority.

Current SBE rules that govern public and independent school standards rely upon these statutes as the basis for our delegated rulemaking authority to give full effect to nondiscrimination requirements. For example, Rule 2113 of the Education Quality Standards (EQS) states that *“No student in a public school or independent school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.”*<sup>4</sup> In addition to Rule 2113, the approval process for independent schools requires the SBE to find that a school’s facilities satisfy lawful requirements<sup>5</sup>, which includes PAA.

The SBE is in the final stages of a comprehensive update to Rule Series 2200, which governs the standards and processes applicable to the approval of independent schools, along with the processes for complaints, suspension, and approval of the same. During the rulemaking process, the SBE has taken the opportunity to clarify and strengthen the standards pertaining to nondiscrimination. Our efforts were further informed by comment we received from the public during our formal public comment period. With respect to nondiscrimination rules, all public comment, including comment from the independent school community, favored more explicit safeguards against discrimination. Now that the public comment period has closed, the SBE is in the process of finalizing amendments to Rule Series 2200 that would require independent schools, as a condition of approval, to demonstrate that they comply with all statutory requirements, 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 V.S.A., Chapter 141) and Fair Employment Practices law, as codified at 21 V.S.A. § 495.
2. An assurance (i.e., certification), signed by the Head of School, that the school complies with the Vermont Public Accommodations Act and Fair Employment Practices law 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.

Our plan is for this current rulemaking to conclude within the next month and move to LCAR by March of this year. Additionally, the SBE intends to open the EQS rules for updates soon and has established a committee to focus on that work. I expect that enhancements to nondiscrimination language within that rule series will also be considered during that process.

The SBE is drafting its rule language to incorporate provisions of PAA and the Fair Employment Practices law by reference (rather than restating language that could be rendered incomplete with additions in statute), so if changes are made directly within those statutes, their effect will pass through our updated rules whenever changes to the statute are made.

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<sup>4</sup> [SBE Rule 2113](#)

<sup>5</sup> [SBE Rule 2226.8](#)



Finally, to the extent that your committee may consider additional standards applicable to independent schools (or conditioning eligibility for acceptance of public tuition funding), I recommend that these standards be tied to the existing independent approval process, rather than creating a parallel process to be administered by local school districts. Regulatory compliance can be much more efficiently, effectively, and uniformly addressed by the AOE and SBE (with the AOE making recommendations, and the SBE making final decisions) working directly with the schools, rather than school districts having to make determinations on a case-by-case basis triggered by individual student enrollment requests. This will assure predictability and objectivity in the approval process for schools. It will also allow school districts to make decisions about tuition payment simply by referencing a list of approved schools, which will keep the decision-making process simple and consistent at the local level.

I hope you find this information helpful and would welcome the opportunity to provide your committee with additional clarification about the SBE's work at any time.

