

AOE Testimony: Independent School Approval

Testimony to: House Committee on Education
Respectfully submitted by: Emily Simmons, General Counsel
Date: January 17, 2023

Statutory Framework for Independent Schools

Vermont law creates several categories of private schools, which are called “independent schools.” The sources of law for independent schools are not organized into one single location.

First, the definition section of Title 16 (16 V.S.A. § 11) includes the following information:

- Independent school – means a school other than a public school, which provides a program of elementary or secondary education, or both.
- Approved independent school meeting education quality standards – means an independent school in Vermont that undergoes the education quality standards process and meets the requirements of 16 V.S.A. § 165(b)¹.
- Approved independent school – means an independent school that is approved under 16 V.S.A. § 166(b).
- Recognized independent school – for any school year and means an independent school that meets the requirements for recognized independent schools in 16 V.S.A. § 166(c) and that is not a home study program.

Second, Vermont’s compulsory school attendance law mandates that all children between the ages of six and sixteen must be sent to either a public school, an approved or recognized independent school, an approved education program or enrolled in a home study program. 16 V.S.A. § 1121. Therefore, the label given by the State to a private education program is important in order to ensure a student’s attendance at the school will satisfy the legal requirements to avoid truancy.

As you can see from the cross references above, additional detail concerning approved and recognized independent schools can be found in 16 V.S.A. § 166. In that section, status as an approved independent school comes from the State Board of Education and is granted if the

¹ An approved independent school meeting education quality standards must participate in the same oversight process for compliance with State Board of Education Rule 2000 “Education Quality Standards” as a public school in order to be given this status. Such schools are eligible to receive the full amount of tuition charged, rather than the statutorily established amount called “average announced tuition” for each publicly funded student.

school 1) provides a minimum course of study², 2) substantially complies with all statutory requirements for approved independent schools and 3) complies with the State Board’s rules for approved independent schools.

In the same section, status as a recognized independent school is granted after filing an enrollment notice with the Agency of Education (AOE). The enrollment notice must contain information and assurances regarding the minimum course of study, the school’s academic calendar, maintenance of attendance records, assessment of student progress and compliance with physical and health safety matters consistent with federal and state laws. The Agency’s [enrollment notice form](#) can be found on the AOE website.

Finally, the tuition payment statutes, 16 V.S.A. § 821 (elementary) and § 822 (grades 7 – 12) establish that an approved independent school may receive publicly funded tuition. The statutes do not grant authority to pay tuition to a recognized independent school.

There is a new and important complicating factor to bear in mind. Act 173 of 2018 created a new distinction among approved independent schools. Starting on July 1, 2023, those schools that intend to accept public tuition (i.e., to enroll students from tuition paying school districts) must complete additional approval steps established by State Board of Education rules designed to ensure the ability of a student who receives special education services to attend the school of the student’s choice. However, Act 173’s amendments to this section of law retained the more general category of approved independent school, therefore complicating the terminology. The State Board rules distinguish between the two categories by using the terms “approved independent school” to mean schools that may accept public funding and “approved independent school ineligible to receive public funds” for all other schools that have met the State Board’s basic requirements for approval, but not the newer requirements regarding special education.

Agency of Education Responsibilities for Approved Independent Schools

The committee will receive testimony tomorrow from the State Board of Education’s chair regarding the content of [State Board Rules](#) for approved independent schools. These rules delegate many responsibilities for oversight of the approval process and rules compliance to the Agency of Education. I will summarize just the aspects of the rules that pertain to the Agency’s oversight to avoid repeating material that will be covered in tomorrow’s testimony.

Rule 2223 requires the Agency to maintain an application for independent school approval and to appoint a review committee for each application. The review committee, made up of Agency employees, makes a site visit to the school and writes a report containing its findings. The review committee’s report and recommendation regarding approval is reviewed by the

² The minimum course of study, as defined by 16 V.S.A. 906 “means learning experiences adapted to a student’s age and ability in the fields of: (1) basic communication skills, including reading, writing, and the use of numbers; (2) citizenship, history, and government in Vermont and the United States; (3) physical education and comprehensive health education, including the effects of tobacco, alcoholic drinks, and drugs on the human system and on society; (4) English, American, and other literature; (5) the natural sciences; and (6) the fine arts.

Secretary of Education and forwarded to the State Board for action. This process takes approximately six to eight months and is conducted for initial approvals (i.e., new schools) and renewals of approval, which occur on a cycle of two to five years for each school.

Rule 2223 also provides a process for the Agency to conduct investigations of complaints that an approved independent school is failing to meet approval standards or comply with laws that apply to approved independent schools. The Agency's investigation may result in a hearing before the State Board of Education at which the Secretary can recommend revocation or suspension of approval status. The Secretary also has the authority, in the course of a formal investigation under Rule 2223.9, to place an approved independent school on probation, which is a public designation. The ability to place a school on probation is a new authority added in the State Board's recent rulemaking updates, effective May 2022.

This memo does not include discussion of the Agency's responsibilities for therapeutic approved independent schools. These schools limit enrollment to students who are on an Individualized Education Program (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 Local Education Agency (LEA) (i.e., the supervisory union, including those districts that operate rather than paying tuition for one or more grades) 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.

The Agency maintains the [Vermont Approved and Recognized Independent School Directory](#) which lists all Vermont schools and education programs that have been approved or recognized under applicable law.