

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

22298.1

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 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. 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, 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.

2229.1 Enrollment: Requirements for Approved Independent Schools, Publicly Funded Students, and LEAs

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

1) 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) If the student satisfies **the other special considerations or requirements** of the school's enrollment policy, the school shall accept the student as a candidate for admission;

4) Candidates for admission shall be accepted for enrollment in a non-discriminatory manner. 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 in need of special education services. 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, 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.

2229.4 Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students Enrolled 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 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.

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 educator 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 due process 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. The parent, or where appropriate the student, shall be a party to the proceeding.

g. If the hearing officer determines the approved independent school cannot meet the student's special education needs, 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.