

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.