

Proposed Rule as submitted to SBE	AG “subcommittee” proposed changes	AOE’s proposed changes (2/4/22)
Section 2227 Approval	2227.8 The school provides assurances that it shall not discriminate against students with disabilities on the basis of their disabilities.	
Section 2229 Approval to Receive Public Tuition, Special Education Approval.	Section 2229 Approval to Receive Public Tuition, Special Education Approval.	
<p>2229.1 Enrollment: Requirements for Independent Schools, Students, and LEAs.</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. 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.</p>	(VLA recommends deletion of original proposed 2229.1 in its entirety).	

<p>§794 and who are enrolled pursuant to a written agreement between the LEA and the school.</p>		
<p>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. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.</p>	<p><i>(VLA recommends deletion of title “Staffing”)</i> 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. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.</p>	
	<p>2229.1 Non-Discrimination Requirement for Receipt of Public Tuition</p> <ul style="list-style-type: none"> (1) The independent school’s enrollment policies shall not discriminate against students seeking enrollment based on their disability. (2) Independent Schools receiving public tuition shall provide students with disabilities an equal opportunity to participate in its services, facilities, 	

	<p>privileges, advantages, benefits, or accommodations.</p>	
<p>2229.3 Assurances.</p>	<p>2229.2 Assurances. (no changes except for numbering)</p>	
	<p>2229.3 Enrollment in an Independent School by Students with Disabilities Living in Choice Districts.</p> <p>1) The student or the student’s parent shall voluntarily request the enrollment.</p> <p style="padding-left: 40px;">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.</p> <p>b)2) A For an independent school to receive public tuition, it shall enroll all publicly funded students on a first come first served basis until capacity is reached. The student or the student’s</p>	<p>2229.3 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School</p> <p>a) Each approved independent school shall maintain and follow a written enrollment policy which, at minimum, shall require the following:</p> <p style="padding-left: 40px;">1) The student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;</p> <p style="padding-left: 40px;">2) If the student satisfies other requirements of the school’s enrollment policy, the school shall accept the student as a candidate for admission;</p> <p style="padding-left: 40px;">3) 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 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.</p>

	<p>parent shall voluntarily request the enrollment.</p> <p>3) Once a student is enrolled in an independent school, if the student qualifies for services under the IDEA, 20 U.S.C. §§1400 et seq., the student's IEP team shall meet to determine how the student's IEP services shall be provided. The independent school shall designate personnel as members of the IEP team.</p>	<p>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 alternative an alternative enrollment for the student.</p> <p>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 this rule (2229.3), 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.</p> <p>d) This Rule 2230.3 shall not apply to a therapeutic independent school.</p>
<p>2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School.</p> <p>1) The student or the student's parent shall voluntarily request the enrollment.</p> <p>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</p>	<p>2229.4 Procedures for Ensuring the Provision of Special Education Services to Students who Live in Choice Districts Enrolled in Independent Schools.</p> <p>(1, 1a and b ("b" becomes "2") with changes are moved to section 2229.3 above)</p> <p>Revised 2229.4 begins as follows:</p> <p>a. <u>Upon the enrollment of a student with an individualized education program (IEP) in an independent school the LEA of the student's residence shall promptly</u></p>	

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.

2) The student's IEP team or the LEA shall determine whether the enrollment is an appropriate placement and least restrictive environment.

3) The student's IEP team and the LEA shall comply with all applicable federal and State requirements.

4) If the student's enrollment, pursuant to 2229.4(2), is based on provision of certain services in the student's IEP, the LEA and the school shall work collaboratively to identify a solution.

5) 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.

6) If the LEA and approved independent school do not agree on whether the independent school is able to provide the services on the 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

convene an IEP team meeting. 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 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 plan.

b.The LEA of the student's residence and the 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 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.

cost of the hearing officer shall be shared equally between the parties.
(a) 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:

e.To ensure the provision of services in the student's IEP the 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 Independent School recruiting and hiring special educators or other professional or paraprofessional staff;
- 2.The 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 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 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.

	<p><u>g)If the hearing officer determines the Independent School cannot meet the student's special education needs, the LEA shall immediately convene an IEP meeting to consider alternatives.</u></p> <p><u>h. Rule 2230.4 shall not apply to therapeutic independent schools.</u></p> <p><u>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 opinion pursuant to subsection (f) of this rule.</u></p>	