SBE Proposed Rules – 2200 Series

Independent Schools

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Independent schools are contractors to the state. The state cannot delegate the Constitutional responsibility for providing and monitoring the quality of education but it can contract out the delivery of services and establish contractual conditions. In fact, it is the state's inescapable responsibility to do so. The relation between the state and independent schools has waxed and waned across the years. There is, however, general agreement that the rules need to be reviewed.

An earlier state board (2017), explicitly sought to address particular concerns:

- Financial accountability – Some private schools had financial difficulty and closed at great inconvenience and disruption to all concerned.
- Equal opportunities - Some independent schools were said to employ unequal admissions practices particularly for special education children.
- The Agency of Education does not (and still does not) have the resources to properly conduct the application, renewal and evaluative processes. The resulting fog obscured the proper addressing of the previous two concerns.

This effort came to naught.

Now comes the recomposed state board with a new effort at revising these rules. Reflecting a good deal of commendable work and effort they, nevertheless, fail to properly address important deficiencies.

Some specific comments:

- An overworked two-person review team(s) does not represent sufficient capacity to evaluate and monitor independent schools (proposed rule 2223).
- The curriculum requirement is unacceptably weak (16 VSA 906).
- The enrolling of special education students (2223.3 and 229) is ambiguously worded, of questionable legality and it's wrong.
- Having the Independent Schools be judge and jury of offenses of their colleagues (222.32), even with an SBE appeal written in, is inappropriate and creates an impression of impropriety. To be saddled with this process in a potentially tense time invites trouble. A recent case of the independent schools as investigatory body was overly late, and in some eyes, of insufficient thoroughness.
- "Lacks financial capacity." A vitally important criterion but the term lacks specificity. Again, this invites trouble.

- Tuition section (22254) – Suggest waiting until the Maine case is decided by the U. S. Supreme Court and the implications are digested. Setting more “unprecedents” simply traps the state board and entangles an already unpredictable situation.
- Special education (229 & 229.3) – This will prove problematic. “Assurances” is too weak a phrase and open to interpretation.
- Out of district placement – The section seems redundant and may conflict with federal and state law. Opening to unilateral placements (or the appearance thereof) has resulted in expensive procedures .

It is surprising to not find any reference to the state auditor’s report of last month (July 2021) which addresses these same rules. Whether the 25 recommendations are solid in whole or part requires consideration.. With the rules open, failure to consider these recommendations may be an error that will take years to correct.

William J. Mathis spent more than a quarter century working with and teaching these rules. He served on the Vermont state board of education during the previous effort of reviewing these rules.