

## MEMORANDUM

**TO:** Jennifer Deck Samuelson, Chair, State Board of Education  
**FROM:** Sarah Buxton, Attorney  
**DATE:** November 5, 2024  
**SUBJECT:** Estimate of Legal Services Costs for Updating SBE Rules

### 1. OVERVIEW

This memo responds to your request for information and estimates the cost of legal services to the State Board of Education (SBE) for updating its administrative rules that are currently in effect. This is a general estimate and does not represent a thorough analysis of each rule to determine whether the SBE continues to have full, partial, or any continued jurisdiction over the rule at hand. In some cases, for example, the SBE's authority may have been reassigned or extended (shared) to other Agencies, including the Agency of Education, Department of Health, Department of Mental Health, Department of Motor Vehicles, Department of Labor, and Department for Children and Families, etc. Incidentally, most of the current rules were drafted when it would have been the role of the Department of Education (now Agency) staff to draft the regulations and oversee the rulemaking process on behalf of the whole Department of Education (which included the SBE). The Commissioner (now Secretary) was designated as the "appointing authority," meaning that it was under their name that the rules were legally promulgated. With the creation of the Agency, two "appointing authorities" now exist (the Secretary and the SBE). The SBE would be operating in a grey area if it were to claim that it alone has authority over each and every rule, to the exclusion of the now Agency.

Determining jurisdiction requires more than a legal analysis. Since the development and promulgation of administrative rules are the responsibility of the executive branch of government, the SBE would need to coordinate directly with the appointing authority of any Agency that might share responsibility for carrying out laws or programs related to the rule at hand. Such inquiry and coordination may result in a longer process, from a practical perspective, and a change in the SBE's role in modifying some or all of a given rule, from a legal perspective. I advise that an initial review and assessment be conducted to identify the appropriate Agencies, determine whether there is agreement on whether and how the rule should be modified, and the degree to which coordination would be required for each rule. This may take about fifteen to twenty (15-20) hours of research and approximately thirty to forty (30-40) hours of individualized conversations, meetings, or other communications with key Agency officials. **(45-60 hours total)**

The list of rules in Section 2 indicates the year that the rule was last updated (if recorded in Lexis Nexis). Without conducting in-depth research and relying only on my own current familiarity with the subject matter, I believe that a few may have been partially or completely superseded by state or federal law since they were last opened. When this happens, the law takes precedence over the rule automatically.

Rules followed with an asterisk (\*) were clearly promulgated under joint authority with another state agency. Those with a plus sign (+) *may* be obsolete and could be considered for sunseting, though more analysis would be required before such action could be recommended.

All changes to these rules must be made pursuant to the Vermont Administrative Procedure Act (Act). This estimate assumes that no rulemaking process will be eligible to follow the emergency procedures of the Act and will follow, at a minimum, the standard procedure for amending and promulgating each rule. The SBE should plan that each Rule will take at approximately eight months from the date that it is filed to become final (promulgated), barring no unusual issues that would cause further delay. For comparison, the recent EQS and 2200 Rules each required a 45-day extension to the eight-month deadline to accommodate delays caused by scheduling needs of various participants in the rulemaking process.

## 2. RULES UNDER CONSIDERATION

<b>1100</b>	<b>State Department of Education (1992)</b>
<b>1200</b>	<b>State Board of Education (2010)</b>
1300	Special Education Finance and Census-Based Funding (2022)
2000	Education Quality Standards (2024)
2200	Independent School Program Approval (2024)
<b>2300</b>	<b>Length of School Day and Year; Vermont Secondary Equivalency Program (GED); Driver Education (2006)</b>
2360	Special Education Rules (2022)
<b>2370</b>	<b>Career and Technical Education (2002)</b>
<b>2400</b>	<b>Vermont Adult Education (2002)</b>
<b>2500</b>	<b>Vermont’s School Accountability System Based on Student Achievement (2004)+</b>
2600	Prekindergarten Education* (2016)
<b>3100</b>	<b>School District Organization (2006)</b>
3400	Proposals for Alternative Structures Under Act 46 (2017)
<b>4000</b>	<b>Unsafe School Choice Option Policy (2004)</b>
<b>4100</b>	<b>Pupils (2010)</b>
<b>4500</b>	<b>Use of Restraint and Seclusion in Schools (2011)</b>
5100	Licensing of Educators and Preparation of Education Professionals (2024)
<b>6000</b>	<b>School Bus Idling (2000)</b>
<b>6100</b>	<b>Building Projects Eligible for State Aid (2010)</b>
<b>6300</b>	<b>General Rules for Prequalification of Bidders on Contracts over \$ 500,000 (2000)</b>
<b>6400</b>	<b>Construction Management (2000)</b>
<b>7100</b>	<b>Relationship with Public, Other Agencies, and Institutions (unclear, circa 1988)+</b>
<b>8100</b>	<b>School Lunch Programs (unclear, circa 1988)+</b>
<b>8200</b>	<b>Approval of New Family Day Care Home Sponsors (1994) +</b>
<b>9000</b>	<b>Public Bids (1997)</b>
<b>9100</b>	<b>Net Cost Per Pupil (1996)</b>
<b>9200</b>	<b>Full Time Equivalent Enrollment of Pupils (2008)</b>
<b>9300</b>	<b>Allowable and Extraordinary Transportation Expenditures (1998)</b>
<b>9500</b>	<b>Reporting Students for Whom English is Not the Primary Language (1998)</b>
<b>10100</b>	<b>Coordination of Services to Children and Adolescents with a Severe Emotional Disturbance* (1991) +</b>
<b>22-000-020</b>	<b>Uniform School Calendar (1996)+</b>

### 3. Estimate for Legal Costs

Any rule promulgated *before 2015* (roughly 10 years ago) has been bolded above. This estimate contemplates updating the **bolded rules**, or sunseting them through the APA process, if desired. Below, they have been grouped with the following considerations:

1. The SBE, AOE, other Agencies, and retained counsel (or a consultant) will require capacity at the staff and leadership level to dedicate time and attention to each rule. Probably no more than three major rules can be considered at one time, based on my experience working with the state agencies that may be involved.
2. Rules that may be “sunset” can be grouped with rules in progress and may not require their own rulemaking process. The SBE can maximize resources and save time by “piggybacking” some of the notice, publishing, hearing, and public comment requirements together with rules that will require more substantial participation by stakeholders.
3. Some rules may require the same stakeholders and Agency officials to work together. For efficiency, those are also grouped together, when possible.

Attachment A outlines an estimate for time and legal (or other qualified consultant) costs associated with creating a brand-new rule, totaling approximately 200 hours and assuming payment of \$200 per hour. This assumes that the consultant is at least moderately familiar with the subject matter of the rules and has some understanding of how each rule may or may not impact other Agencies in the executive branch. The estimates below scale the time required based on the length, subject matter, and likely disposition of the rule (e.g. sunset). A range of hours is provided to account for variation in the consultant’s familiarity with the specific subject matter and jurisdictional stakeholders.

#### **GROUP 1 (2025)**

2370	Career and Technical Education; 120-160 hours
2300	Length of School Day and Year; Vermont Secondary Equivalency Program (GED); Driver Education; 120-150 hours
22-000-020	Uniform School Calendar; 20-40 hours

**260 – 350 hours**

#### **GROUP 2 (2026)**

10100	Coordination of Services to Children and Adolescents with a Severe Emotional Disturbance; 30-50 hours
4000	Unsafe School Choice Option Policy; 60-80 hours
4100	Pupils; 130-60 hours
4500	Use of Restraint and Seclusion in Schools; 110-130 hours
8100	School Lunch Programs; 30-50 hours
8200	Approval of New Family Day Care Home Sponsors; 30-50 hours

**390 – 420 hours**

**GROUP 3 (2027)**

1100	State Department of Education; 140-160 hours
1200	State Board of Education; 150-180 hours
9500	Reporting Students for Whom English is Not the Primary Language; 70-90 hours
2500	Vermont's School Accountability System Based on Student Achievement; 30-50 hours
3100	School District Organization; 120-140 hours

**510 – 620 hours**

**GROUP 4 (2028)**

6000	School Bus Idling; 100-120 hours
6100	Building Projects Eligible for State Aid; 150-170 hours
6300	General Rules for Prequalification of Bidders on Contracts over \$ 500,000; 70-90 hours
6400	Construction Management; 70-90 hours
9000	Public Bids; 80-100 hours

**470 – 570 hours**

**GROUP 5 (2029)**

2400	Vermont Adult Education; 140-160 hours
9100	Net Cost Per Pupil; 80-100 hours
9200	Full Time Equivalent Enrollment of Pupils; 120-140 hours
9300	Allowable and Extraordinary Transportation Expenditures; 60-80 hours
7100	Relationship with Public, Other Agencies, and Institutions; 30-50 hours

**430 – 530 hours**

**4. TOTAL**

The total of Groups 1-5 (except for CTE Rules) and the work identified in Section 1 equals **1,985 – 2,390 hours over five years**. At an estimated \$200 per hour rate of pay, this may cost **between \$397,000 and \$478,000 over a five-year period**.

## **ATTACHMENT A**

### **Counsel for Rulemaking – \$60,000 for legal costs per rule**

#### Proposed Rule:

1. Legal review of statute and other relevant law (20 hours)
2. Initial meetings with Board/Committee/Stakeholders to establish framework of the rule (40 hours)
3. Drafting (30 hours)
4. Meetings with Board/Committee/Stakeholders to for feedback (20 hours)
5. Revise and Finalize Proposed Rule, including final approval meetings (35 hours)
6. Prefile ICAR Forms, preparation, filings, meeting (15 hours)
7. File with SOS (2 hours)

**162 hours**

#### Public Comment and Final Rule:

1. 3 meetings x 2 hours plus prep and follow-up (10 hours)
2. Read, review and organize public comment for Board (30 hours)
3. Facilitate Board review and draft responses (20 hours)
4. Modify Rule based on responses (25 hours)
5. Finalize Rule and Responses with Board, including final approval meetings (30 hours)
7. File LCAR Forms Preparation, filings, meeting (15 hours)
8. TBD respond to objections (XX)

**130 hours**

#### Promulgate Rule:

1. Complete Filing with SOS, clean-up and record transfer (8 hours)

**8 hours**