

August 16, 2023 (10:15 a.m.)

Dear State Board Members,

The Vermont School Boards Association, Vermont-NEA, Vermont Superintendents Association, and Vermont Principals' Association are strongly aligned around the shared values of:

- ensuring an equal education opportunity for all students and families,
- ensuring transparency and accountability for all education fund spending, and
- ensuring that all taxpayer funded schools treat students and staff equitably, free from unlawful discrimination based on disability, income, race, identity, or personal beliefs.

We are writing to comment on the proposed changes to the Rule 2200 series through the lens of these shared values. While we appreciate that this is a work-in-progress, we are concerned that the current draft fails to meet the legislature's intent of ensuring that all publicly funded students benefit from high quality education standards. We are also concerned that the State Board's process lacks the transparency and accountability that Vermonters expect from their public bodies.

Equal Education Opportunity for All

On May 17, 2023, the State Board voted to remove private schools that receive public vouchers from the Act 1 updates to the Education Quality Standards Rule 2000 Series (EQS). The new EQS are the result of more than two years of evaluation and discussion by the Act 1 Working Group, a diverse group of stakeholders charged by the legislature and Gov. Phil Scott to ensure that the standards are inclusive, anti-racist, anti-discriminatory, equitable, and culturally responsive. According to the [May 17, 2023 minutes](#), the State Board decided not to apply the proposed EQS to private schools, and instead, the Board decided to "reopen [Rule Series] 2200 to apply the provisions of Act 1 to independent schools." This decision was perplexing considering that close to 80% of the students attending these private schools are publicly funded.

We do not support the State Board of Education's purported "separate but equal" approach. The legislature clearly intended for Act 1 to apply to all of Vermont's students. History has demonstrated that separate but equal is inherently discriminatory and must not be tolerated. Instead of applying the same rules to all schools that receive public funds, the

State Board has incorporated select portions of the Act 1 updates to the EQS into the Rule 2200 Series while ignoring other key provisions.

We believe that all students who receive a publicly funded education should have the benefit of an education program that is inclusive, anti-racist, anti-discriminatory, equitable, and culturally responsive. Again, this was the intent of the Legislature when it passed Act 1 in 2019.

Preventing Unlawful Discrimination

The proposed changes to Rule 2223.4 include an annual compliance assurance that “each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on an annual basis.” This vague and broad assurance language does not include an appropriate (or any) emphasis on nondiscrimination.

We suspect that schools that refuse to post a statement of nondiscrimination on their websites or refuse to sign an assurance of compliance with the Vermont Public Accommodations Act may instead agree to sign a vague and broad assurance indicating “continued compliance with applicable requirements of this rule and federal and state law” in order to receive public tuition. In such a case, there is no explanation of how nondiscrimination requirements will be ensured and enforced. The provision of public education funding to schools that refuse to comply with nondiscrimination laws is unlawful under the Vermont Constitution and it is unacceptable under the fundamental American right of separation of church and state and the Vermont Public Accommodations Act. The rules should include a robust and meaningful enforcement mechanism to ensure compliance with all State Board rules.

Accountability

Proposed rule 2223.4 requires submission of an annual compliance form but the rule is weak on accountability. If a school fails to submit a compliance form (on its face a simple act), the rules require a protracted investigation and process that gives the State Board discretion to “revoke, suspend or impose conditions on approval” of a private school only if the Board determines that the school “intentionally violated” subsection 2223.4. Additionally, proposed rules 2226.2/2226.3 (Due Process and Investigations) do not provide for notification of LEAs when private schools are under investigation or allow LEAs to withhold public tuition during the investigation. LEAs should be notified of any investigation of a private school receiving taxpayer funds and have clear authority to protect public tax dollars, up to and including withholding tuition payments pending resolution of the investigation.



Transparency

The State Board used an opaque process to advance the Rule 2200 series changes over the course of a few weeks during the summer while Vermont was recovering from catastrophic flooding. In addition to a rushed schedule, the Board's Rule 2200 Series committee meetings were improperly titled on the Agency of Education website as "Rule 2000" Committee meetings. There is no advance public notice of a meeting if it is improperly warned. Due to this lack of transparency and unusually rushed schedule, there was very sparse public attendance at the Rule 2200 Series Committee meetings and there was no public comment on the content of the Committee's proposed changes to the rules. The lack of public input on subject matter known to be of compelling interest to stakeholders and the public should have been a signal to the State Board that the notice and process were flawed.

Given the flawed process used by the Committee, it's not surprising that the ultimate product does not "apply the provisions of Act 1 to independent schools" as promised by the State Board. Rather, it applies some select provisions of Act 1 to independent schools with weak accountability standards.

One glaring change in the proposed rules is the accelerated approval process granted to accredited schools. According to proposed rule 2224.2.1, accredited schools do not need to attest to compliance with 2223.3.3 (Instruction, Faculty and Special Services) or 2229 (Approval to Receive Public Tuition; Special Education Approval) in their application and review process. Without such attestation, it is unclear how compliance with these critical requirements will be measured and enforced.

Other EQS sections that are completely missing from the proposed rules include: 2123.3 (Professional Learning), 2122.2 (Instructional Materials), 2123 (Local Comprehensive Assessment Systems), 2125 (Continuous Improvement Plan) and 2124 (Reporting and Results). The reporting requirements are robust in the EQS for public schools and offer transparency for areas related to equity; they are completely missing from the proposed changes to the Rule 2200 series.

In sum, we are concerned that the process of the proposed amendments to the 2200 Rules lacks transparency **and** accountability. We believe that the State Board must operate in compliance with the most basic transparency and accountability expectations so that Vermonters can fairly participate and bear witness to the State Board actions.

We are also concerned that the proposed rules fail to ensure that all Vermont students who receive a publicly funded education have equal access to inclusive, anti-racist, anti-discriminatory, equitable, and culturally responsive educational opportunities as intended

by the Legislature. The issues involved in the 2200 Rules go to the heart of matters relating to equity, accountability, and education quality in the taxpayer funding of selective admission private schools.

We urge the State Board to fully consider and address these concerns as the process continues.

Sincerely,

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