

TO: State Board of Education

FROM: Mark Koenig

RE: Public Comments - Rule Series 2000 Proposed Changes

DATE: October 5, 2023

Some of the concern around these changes stem from the recent Supreme Court decision in Carson v. Makin, and the attempt by different organizations within Vermont to fashion regulations that follow this ruling while staying true to the requirements set out under the Vermont Constitution.

Many private schools seem to rely on the idea that "we're different than public schools and need to be treated as such." For example, in a letter dated August 18, 2023 from the heads of four independent schools to the VT State Board of Ed, the closest expression of any specific concerns about the proposed rule changes was that "our non-profit governance structure is incongruent with some of the specific governance requirements of EQS." This letter provided no specifics or details as to how non-profit governance structures differ in ways to make it incongruent to follow governance requirements, nor is there any attempt to explain how their existing governance structures might nonetheless comply with the spirit of the EQS requirements at issue or how these EQSs might be revised to retain their underlying intent but in such a way to encompass different governance structures.

Bright line rules are easiest to administer and enforce, but can be restrictive. Exceptions can recognize that one size does not always fit all, but such exceptions must be narrowly tailored -- which requires specificity. Exceptions also require the regulatory body to investigate and make rulings on whether and/or how organizations are implementing such exceptions. Both AOE and the State Board have not consistently provided timely rulings in such areas. For example, during this past February's State Board meeting, "Kolbe moved to postpone consideration of re-approval [of the Mid Vermont Christian School] until such time a completed application has been received to include a signed Addendum for Independent School Applications – the "attestation clause" – without revision and consistent with Rule 2226.6 that requires the head of school to sign an assurance that the school complies with the Vermont Public Accommodations Act (9 V.S.A. Chapter 139) in all aspects of the school's admissions and operations . . . The vote passed unanimously." State Board Rule provides that a school completing a timely application for renewal extends until the Board acts on the application (SBE Rule 2223.6). To date, the State Board has not acted on the Mid Vermont Christian School application for renewal meaning that this school which is clearly non-compliant continues to remain listed as an approved school. If this is how the State Board policies its own policies and requirements, why will any independent school worry about being called out on even a set of diminished EQSs?

"Different" provides no detail which could allow a regulatory body to craft a meaningful exception. Bright line rules are easy to understand and follow, but can seem too rigid or dogmatic; exceptions, while permitting flexibility or acknowledgment of a unique situation, also tend to result in the problem of "give an inch and take a mile."

Consider when someone wants to purchase a home. Most buyers look to obtain a mortgage from a lender. The lender sets out a list of requirements and obligations that the borrower must agree to in order to obtain the mortgage. If the buyer does not wish to comply with those requirements, the buyer

is free to walk away from the lender and find another way to fund the purchase or decide not to purchase the property.

Similarly, if private or independent schools want to use taxpayer funds to operate their institutions, they must abide by the same requirements as public schools, including requirements such as transparency of budgets, accreditation of educators, and practicing nondiscrimination with regard to race, gender, religion, and special needs. If certain public or independent schools do not want to abide by such requirements, they are free to find other means by which to fund their operations — but they cannot demand the use of taxpayer funds to do so.

I strongly encourage the State Board to adopt a single set of standards that will apply to all of Vermont's publicly-funded students.

Thank you,

Mark Koenig

Member, Addison Northwest School Board

Member, Vermont School Boards Association

Chair, Employer Commission on Public School Employee Health Benefits