

# Vermont State Board of Education Manual of Rules and Practices

## Series 2200 – Independent School Program Approval

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## Rule 2200 Independent School Program Approval

### Section 2220. Statement of Purpose

The purpose of independent school approval rules is to assure effective, available, and equitable, educational opportunities that are anti-racist, culturally responsive, anti-discriminatory, and inclusive for students enrolled in Vermont's independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018 and Act 1 of 2019.

These rules are organized to provide clarity to schools regarding requirements for initial and continued approval to operate and receive public funds. Ongoing compliance with state and federal laws and regulations is expected and through annual compliance assurances. Accrediting agencies that meet criteria indicating high quality, experience, and alignment with Vermont's educational values will be recognized and the schools they accredit will enjoy an accelerated approval process.

In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), these rules prohibit discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status.

These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:

(a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 of this Manual and in this Statement of Purpose;

(b) why all persons should have equitable access to social and economic opportunity;

(c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and all forms of unfair treatment; and

(d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board of Education Manual of Rules and Practices. This manual adopts a definition of Discrimination that is broader than its legal definition. Nothing herein shall create a private right of action.

**Commented [SB1]:** Speaks to non-EQS related changes.

**Commented [SB2]:** Note: Slightly modified language from EQS 2110

## Section 2221. Statutory Authority

16 V.S.A. §§ 166., 2958(e), and 2973; 2019 Act No. 1; 16 V.S.A. §164 (11)

## Section 2222. Definitions

Agency: means the Vermont Agency of Education.

Anti-discrimination: means actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter discrimination as defined in this Manual, and that promote a fair, just and equitable learning environment for all students.

Anti-racist: means actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter racism as defined in this Manual and that promote a racially inclusive learning environment for all students.

Approved Independent School: means an independent school that meets the requirements in Sections 2223 and 2224, as well as the requirements in Section 2229 (Approval to Receive Public Tuition; Special Education Approval).

Approved Independent School Ineligible to Receive Public Funds: means an independent school that meets the requirements in Section 2223 and 2224 but does not meet the requirements of rules concerning the delivery of special education services in Section 2229.

Board (or State Board or SBE): means the Vermont State Board of Education.

Caste: means a hierarchical social system of exclusion and dehumanization based on invented notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.

“Civic and Community Engagement” means individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.

“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.

Culturally and Linguistically Diverse Students: means those who are members of home, cultural and social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural

**Commented [SB3]:** Definitions not included here from EQS because the word or phrase is not used: Academic Record\* ( is in later section; 2250), **Applied Learning** Appropriately Licensed Educator, Career Technical Education, College and Career Readiness, Education Support Team, Educational Technology, Educator Mentoring, Evidence-based, Needs-Based Professional Learning, **Personalized Learning Plan**, Proficiency-Based Learning, Proficiency-Based Graduation Requirement, School\* (definition would require substantial alteration), Superintendent, Supervisory Union/Supervisory District, **Technology Integration**, Transcript, **Transferable Skills**, and **Universally Designed Instruction**. (Words in **BOLD** appear to have some aspect of the spirit of Act 1 incorporated into the definition.)

**Commented [SB4]:** From EQS; not in this rule set; subcommittee requested it be added.

and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.

“Culturally responsive teaching” is an evidence-based approach that incorporates knowledge of diverse cultures, languages, and perspectives into learning activities and curriculum design, including connecting students’ life experiences and ways of learning, that helps students to both access rigorous curriculum and to develop higher-order thinking skills.

**Commented [SB5]:** From EQS; not in this rule set; subcommittee requested it be added.

Culture: means a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.

Discrimination: means any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

“Intercultural Competency” describes practices and actions to pursue deep understanding, mutual respect, and willingness to learn about the cultures of all people, especially those who have been marginalized, silenced, and/or undervalued.

“Interdisciplinary” means examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives, including those from their lived experiences, into a coherent understanding or analysis.

**Commented [SB6]:** From EQS; not in this rule set; subcommittee requested it be added.

Equity or Equitable: means that each student receives the resources and educational opportunities to learn and thrive in the classroom and in all aspects of learning, school life, career technical education, and community-school interactions, and to discover and cultivate their talents and interests. To be achieved, equity requires an inclusive school environment and may necessitate an unequal distribution of resources and services based on the needs of each student.

Ethnic Group: means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, nationality, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion, persecution, or other inhuman treatment.

Ethnic Studies: means interdisciplinary, age appropriate and grade-appropriate curricula and programs dedicated to the historical and contemporary study of race, ethnicity, and indigenous peoples (including the Indigenous People of Vermont). This requires a critical examination of the

experiences and perspectives of racial and ethnic groups and indigenous peoples that have suffered systemic oppression, marginalization, discrimination, persecution, and genocide within and outside the United States. “Ethnic Studies” may involve a critical examination of these experiences and perspectives through the lens of the characteristics of social identity groups.

**Ethnicity:** means a concept that embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics.

**Inclusive or Inclusion:** means school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential.

**Individualized Education Program (IEP):** means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Section 2363.

**Language:** means systems of conventional and unconventional spoken, visual-manual, technological, and written symbols, which human beings use personally and as members of social and cultural groups to express themselves; shape identity; acquire knowledge, mediate power, play, create, and imagine; build and sustain familial, social, and cultural bonds; and express a wide range of personal needs, aspirations, and emotions.

**Linguistic diversity:** means the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students’ experience and academic success; eradicating bias, racism, and discrimination; and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.

**Local Education Agency (LEA):** as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.

**Neurodiversity:** means the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include autism, attention deficit hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.

**Race:** means any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color.

**Racism:** means the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or which advances the claim that racial, ethnic, or cultural groups are inherently superior or inferior, thus explicitly arguing or implying that some groups are entitled to dominate,

**Commented [SB7]:** This definition has been moved to later in the section so that it is in alphabetical order.

exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.

Recognized Independent School: means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.

Restorative Practices: means the whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. It encourages members of the school community to be constantly present, attending to needs as they arise. It exercises their ability to be dynamic rather than static in their responses. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerability.

Secretary: means the Secretary of the Vermont Agency of Education or their designee

Social Identity Group: means a group of people who share common characteristics that shape their identity and promote a sense of unity, including sex, sexual orientation, gender identification, disability, class, socio-economic status, or other characteristics that are fundamental to identity.

Special Education Fees: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

Special Education Services: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in Subsection 2360.2.12.

Student who requires additional support: means a student who meets the criteria defined in 16 V.S.A. § 2942(8).

Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive

public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

Tuition: means funds paid by a school district to an approved independent school for general education in accordance with Section 2228.

### **Section 2223. Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds**

Every person or entity desiring to operate an elementary or secondary school as either an approved independent school or an approved independent school ineligible to receive public funds shall apply in writing to the Secretary and meet the requirements of law and these rules. Approved schools shall be permitted to operate for a term of five years or less, as set by the Board, and may submit a new application for approval (reapproval) prior to the expiration of each term. The Board may revoke, suspend, or impose conditions upon an approved school according to process set forth in these rules.

**Commented [SB8]:** This section combines several sections in the rule to clearly state what is required. This version does not add anything new from the (application) requirements reviewed by the subcommittee at its last meeting. Some language has been updated for clarity. Below, the requirements of Title 16 are included.

Approved independent schools and approved independent schools ineligible to receive public funds may be referred to collectively as “approved schools” in this section.

**Commented [SB9]:** Added for clarity in reading for the section. May be changed so that each requirement states whether it applies to approved independent schools and/or approved independent schools ineligible to receive public funds.

#### **2223.1 General Requirements for Approved Schools**

All approved schools must comply with statutory requirements and the Board’s rules for approved independent schools and must provide a minimum course of study pursuant to 16 V.S.A. §906. An approved school must have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with state and federal law or regulation.

**Commented [SB10]:** From 16 VSA 166(b)

#### **2223.2 Nondiscrimination Requirements for Approved Schools**

No student in an approved school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.

**Commented [SB11]:** Integrates EQS 2113

#### **2223.2.1 Nondiscrimination Statement and Policy**

Each approved school shall maintain a statement of nondiscrimination that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6. The statement shall be displayed on its website and included in the school’s application materials. The school shall abide by its nondiscrimination policies in all aspects of the school’s recruitment, enrollment, operation, and employment activities.

**Commented [SB12]:** From former application section.

#### **2223.3 Specific Requirements for Approved Schools**

Each approved school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, which is equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive;

free from hazing, harassment, and bullying; and based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

**Commented [SB13]:** EQS 2122.1

### **2223.3.1 Physical Facilities**

Each approved school must ensure that its physical facilities, including plant, materials, and equipment, meet all applicable state and federal requirements pertaining to the health, safety, and privacy of students.

**Commented [SB14]:** From former application section

(a) Each school must arrange, on an annual basis, a fire safety inspection performed by the Department of Public Safety or its designee. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection, and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

**Commented [SB15]:** 16 VSA 166(b)(7)

(b) Each school must have classroom, laboratory, library, and other facilities necessary to operate its program.

**Commented [SB16]:** From approval section.

### **2223.3.2 Financial Capacity, Solvency, and Stability**

An approved school must maintain the financial capacity to meet its stated objective during the period of its approved status and must adhere to all required financial reporting requirements. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

(a) Each approved school must file federal or state tax returns when due, unless an extension is granted; meet payroll and state payroll tax obligations as they are due; maintain required retirement contributions; ensure that designated funds are not used for nondesignated purposes; fully comply with the financial terms of its secured installment debt obligations; and not become insolvent as defined by 9 V.S.A. §2286(a).

**Commented [SB17]:** From 16 VSA 166(b)(8) and rules

### **2223.3.3 Instruction, Faculty, and Special Services**

An approved school must maintain a written description of its curriculum, methods of instruction, evaluation procedures, and the special services that it has designed to achieve its educational objectives, to demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906.

#### **(a) Professional Staff.**

1. The school must employ a sufficient number of professional staff for the population served who are qualified by training and experience in the areas in which they are assigned as measured by the following:



A. for teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction; and

B. for all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2. The school must have an adequate program of continuing professional staff development. The school shall keep a general description of its staff meetings, expectations for professional growth of staff, and information describing the school's inservice training, financial, and other support given to staff for professional development.

3. Job descriptions for every position that describe training, experience, and degrees required for the position shall be maintained. The school shall also maintain a file with a resume, vita, or description of appropriate qualification for each current staff member, along with their current assignment, length of service, and description of duties not related to teaching or administration.

**Commented [SB18]:** Previously in application & approval sections

(b) Instructional Strategies. Educators shall be supported in:

1. examining their own identities and biases and fostering a learning environment that recognizes multiple ethnic, cultural and racial perspectives; presents and critiques historical counter-narratives; and encourages students to examine issues and expressions of social equity within and beyond the classroom or school;
2. modeling and setting high expectations for all students - regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities and promoting respect for student differences;
3. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;
4. communicating in culturally and linguistically responsive ways;
5. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;
6. using educational and assistive technology to reduce barriers to learning and heighten student engagement;

7. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;
8. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;
9. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;
10. employing the use of data to adapt pedagogy to unique student needs and incorporate student feedback into instructional design and curricula;
11. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;
12. designing learning experiences that improve students' wellbeing, including opportunities for physical movement in the classroom; and
13. fostering a positive classroom culture using restorative practices where appropriate.

(c) Curriculum Content. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive and accessible to families and community members.

1. All approved schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ethnic and social equity studies.
2. The course of study offered shall be adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

**Commented [SB19]:** EQS 2120.5 and 2120.5

(d) Special Services. Schools shall maintain special services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.

**Commented [SB20]:** Previously in application and approval section.

#### **2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities**

Approved schools are expected to prioritize the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in understanding and implementing recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum, each approved school shall develop and maintain the following:

(a) a comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161(a), to address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy, and that it is clear and consistently enforced;

**Commented [SB21]:** Incorporates EQS 2122.1

(b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;

(c) policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and

(d) practices which comply with the requirements of 16 V.S.A. §253 - §255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

**Commented [SB22]:** Updated – new in 2021.

(e) procedures that do not permit any work study student listed on the Vermont Internet Sex Offender Registry to work at the school pursuant to 16 V.S.A §260;

(f) practices which ensure that adults employed in the school receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in 33 V.S.A. §4912(8), and sexual violence and opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);

(g) opportunities to provide access for eligible students to participate in dual enrollment, accept credit awarded, collect enrollment data, and provide support to students in accessing the opportunity and otherwise transitioning to postsecondary enrollment pursuant to 16 V.S.A. §944;

(h) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;

(i) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;

(j) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;

(k) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;

(l) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and

**Commented [SB23]:** Updated to reflect Act 29

(l) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.

### 2223.3.5 Other Required Activities

In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved school shall:

(a) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;

**Commented [SB24]:** 16 VSA 166(b)

(b) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. §2005;

**Commented [SB25]:** 16 VSA 166(b)

(c) comply with legal requirements concerning nondiscriminatory school branding;

(d) maintain a register of the daily attendance of each of its enrolled students;

(e) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;

**Commented [SB26]:** Previously in approval section

(f) comply with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;

(g) complies with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;

(h) policies regarding a student's right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal pursuant to 16 V.S.A. §912;

**Commented [SB27]:** Inserted from Title 16

(i) shall use the assessments required under 16 V.S.A. 164(9) to measure attainment of standards for student performance for publicly funded students and shall provide data related to the assessments as required by the Secretary pursuant to 16 V.S.A. §166(g);

(k) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);

(l) conduct exercises in commemoration of the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;

(m) provide students access to menstrual products at no cost pursuant to 16 V.S.A. §1432;

(n) comply with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;

(o) permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387; and

**Commented [SB28]:** Pulled requirements from Title 16

(p) meet the requirements of other applicable state and federal requirements pertaining to the education, health, privacy, and safety of students and operation of approved schools.

#### 2223.3.6 Independent Schools Operating a Boarding Program

To be approved under these rules, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the Board for accrediting purposes or shall be licensed as a residential childcare facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

#### 2223.4 Annual Compliance Assurance

(a) Each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on an annual basis.

(b) In consultation with the Board, the Secretary shall prepare and make available a simplified form to be used to meet the requirement of this section and shall set the date by which schools must submit it to the Agency, which shall not be less than 90 days from the date it is made available each year.

Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above. Schools may request and the Secretary may grant an extension of up to 45 days to submit its annual compliance assurance form for good cause shown, if the request is submitted 14 or more days before the due date.

(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Secretary, the school will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school of its noncompliance and the school shall have five days to come into compliance. If the school fails to submit an acceptable compliance assurance form to the Agency within five days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2226.3 (Complaints; Investigations), which shall be promptly followed by the due process set forth in 2226.2 (Revocation or Suspension of Approval). If, after a hearing, the Board determines that the school intentionally violated this subsection pursuant to 2226.2(a), it shall decide whether to revoke, suspend, or impose conditions on the approval of an independent school or independent school ineligible to receive public funds.

#### Section 2224. Application and Reapplication for Approval; Approval Process

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. A school meeting the requirements of this Sections 2223 (Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to

**Commented [SB29]:** Rewrites the process – attempting to model what currently happens and provide clarity to current rules. Organized to distinguish between “standard” and “accredited” school pathways. Review for consistency with intent and practice. New forms and notification (possibly) required of secretary.

Receive Public Funds) and this Section, but not Section 2229 (Approval to Receive Public Tuition; Special Education Approval), may be recommended for approval but may not receive public tuition.

#### **2224.1 Standard Application Process**

All independent schools that are not accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall follow the standard application process set forth below.

##### **2224.1.1 Standard Application**

An independent school seeking approval under these rules shall apply to the Secretary using a form prepared by the Secretary to meet the requirements of this section. At a minimum, the application shall solicit the information containing or describing the school's basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies, fiscal practices and evidence of financial capacity, operational information, appropriate assurances or disclosures, a request to receive public funds, if applicable, and any other information that the Secretary, Board, or review committee may deem important in considering whether the school meets requirements for approval.

##### **2224.1.2 Standard Application Review, Visit, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall appoint a review committee of at least two persons. The review committee shall review the application materials and visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities. The review committee shall examine the application materials and consider findings from its site visit and submit a report, including a written initial recommendation regarding approval, to the Secretary, and a copy sent to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

#### **2224.2 Accredited Independent School Application Process**

In the case of any independent school seeking approval that has been accredited within the last five years by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agency), an abbreviated application and review process described in this subsection may be used.

##### **2224.2.1 Accredited Independent School Application**

An independent school seeking approval under this subsection shall apply to the Secretary using a form prepared by the Secretary. The application shall require the school to provide evidence of accreditation from the recognized accrediting agency, basic information about the school, assurances of compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Other Required Activities) or state law, and a request to receive public funds, if applicable.

##### **2224.2.2 Accredited Independent School Application Review, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall review the application materials and submit a report including a written initial recommendation regarding approval to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. A comprehensive review of programs and operations by a review committee, including a site visit, will not be required.

### **2224.3 Review**

The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination in the review and approval of applications and reapplications to promote efficiency in scheduling and expediency in decision-making.

### **2224.4 Board Approval**

The Board shall review each application for approval and consider the recommendation of the Secretary. The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval as it sees fit.

(a) The Board shall make the following findings prior to approval of any school that submitted a standard application:

1. The description of the school in the approval application is accurate;
2. The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate;
3. The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed;
4. The school has classroom, laboratory, library, and other facilities necessary to operate its program;
5. The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.
  - B. For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned;

**Commented [SB30]:** Follows former Approval Process; makes specific findings required for accredited schools.

6. The school has an adequate program of continuing professional staff development as demonstrated in the application;
7. The school employs a sufficient number of professional staff for the population served;
8. The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease;
9. The school maintains a register of the daily attendance of each of its enrolled students;
10. The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;
11. The school has the financial capacity to carry out its stated objectives for the period of approval;
12. The school complies with the requirements of 16 V.S.A. § 255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;
13. The school complies with legal requirements concerning nondiscriminatory school branding; and
14. The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure.

(b) The Board shall make the following findings prior to approval of any school that submitted an accredited independent school application:

1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;
2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and
3. The school substantially complies with the Board's rules for approved independent schools, including state requirements under Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Required Activities).



(c) Prior to approving a school's application to receive public funds pursuant to Subsection 2229.6, the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.

**2224.6 Continued Approval**

Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

**2224.7 Continued Accreditation**

A school accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall notify the Agency within five days of any change to its accreditation status.

**2224.8 Reapplication**

The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The Secretary may extend the reapplication period for good cause.

**2224.9 Interim Compliance Report from Accrediting Agency**

For any school accredited by a recognized accredited agency under Section 2227 (Recognized Accrediting Agencies) seeking reapplication under 2224.8 (Reapplication) whose accreditation period exceeds five years, a supplemental interim report from the accrediting agency must be submitted during the last year of its five-year approval by the Board and must provide information necessary to assure the Board that the school meets the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the Standard Application Process under Subsection 2224.1 in seeking continued approval.

**Section 2225. Length of Approval**

The Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

**Section 2226. Termination; Procedures for Revoking or Suspending Approval**

**2226.1 Termination**

Approval of an independent school that fails to complete a timely application for reapproval shall terminate on the date specified in the most recent approval action, provided that the school received notification of the expiration of the approval period required in Section 2224.8 (Reapplication).

**2226.2 Revocation or Suspension of Approval**

Prior to recommending revocation or suspension of approval under any provision of these rules, the Secretary shall initiate a formal investigation pursuant to Subsection 2226.3 (Complaints; Investigations). Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion on the same. If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the Board of the recommendation and provide notice to the school. The Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

**Commented [SB31]:** Clarifies that the Board has the power to revoke and suspend school approval (overall) and may only revoke or suspend a school's approval to receive public funds.

(a) After providing an opportunity for hearing, the Board may revoke, suspend, or impose conditions on the approval of an approved independent school or the approval of the school to receive public funds for:

**Commented [SB32]:** Clarifies that the Board can do either.

1. failure to demonstrate that the school has the resources required to meet its stated objectives;
2. failure to comply with a statutory requirement for approved independent schools or the Board's rules for approved independent schools, including failure to submit an annual compliance assurance;
3. failure to report any of the financial events listed in (b) below; or
4. failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166.(b)(4).

**Commented [SB33]:** Updated to reflect new addition.

(b) An approved independent school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:

1. the school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;
2. the school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
3. the school's failure to maintain required retirement contributions;
4. the school's use of designated funds for nondesignated purposes;
5. the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

6. the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or

7. the school's insolvency as defined in 9 V.S.A. § 2286(a).

(c) If the Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. § 166(b)(8)(B).

(d) If the Board, after having provided the school a reasonable opportunity to respond to the Board's notification, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the Board may establish a review team that, with the consent of the school, includes a member of the Council of Independent Schools, to:

1. conduct a school visit to assess the school's financial capacity;
2. obtain from the school such financial documentation as the review team requires to perform its assessment; and
3. submit a report of its findings and recommendations to the Board.

(e) If the Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the Board may take any action that is authorized by this section.

(f) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the Board should take if it makes this finding, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(g) Information provided by a school under this section that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166(b)(8).

### **2226.3 Complaints; Investigations**

(a) The Secretary shall conduct an initial investigation of reports or complaints related to the approval requirements of this rule and laws that apply to approved schools. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved school on probation.

(b) At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation.

(c) An approved school may appeal the imposition of probation to the Board by requesting a hearing as provided above.

(d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.

(e) Formal Investigations

1. The school shall receive notification of the complaint unless contraindicated by the particular facts.

2. If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons including a member of the Council of Independent Schools. The team will conduct the investigation and will inform the Secretary and the school of the results. The process in Subsection 2226.2 (Revocation or Suspension of Approval) shall then apply.

3. Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.

**Section 2227 Recognized Accrediting Agencies**

(a) The Board shall create and maintain a publicly available list of currently recognized accrediting agencies that meet the criteria described in (b) below. Any agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Upon review of each submission, the Board shall determine whether it will recognize the accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicant agencies shall be notified of a decision and any conditions of continued recognition in writing. The Board may remove any agency from the list of recognized accrediting agencies at any time, after finding that the agency no longer meets one or more of the criterion listed below.

(b) The Board shall recognize accrediting agencies that meet the following requirements:

1. use a peer review process that includes evaluation by leaders of similar schools,
2. appropriately train all staff and peer reviewers who are involved in the accreditation process,
3. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development,

- admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable),
4. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session,
  5. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools which it accredits and provide interim reports during the last year of any approved schools approval period that are sufficient to meet the informational needs of the Board,
  6. require schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress,
  7. require schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms.
  8. operate continuously for at least five years prior to applying for recognition under this section, and
  9. maintain membership in a peer organization which supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation;
  10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved schools, and
  11. agree to review and report on practices and compliance with state-specific requirements, at the request of the Agency, during the initial or interim stages of an accreditation period.

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(c) The Board shall continue to recognize accrediting agencies listed in Rule 7320 until July 1, 2024.

## Section 2228 Tuition from Public Funds

### 2228.1 Tuition for Independent Schools in Vermont

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Section 2223 (Requirements to Operate an Approved Independent School or Approved Independent School Ineligible to Receive Public Tuition) and Section 2224 (Application and Reapplication for Approval; Approval Process), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

- (a) There is an order from a court or from a due process hearing pursuant to Subsection 2365.1.6 (Due Process Complaint Procedures) requiring such payment, or
- (b) The Secretary has approved an exception for a placement in an independent school pursuant to Subsection 2230.1 (Exceptional Circumstances – Approval Process).

### 2228.2 Tuition for Out of State Schools

Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828.

### **Section 2229 Approval to Receive Public Tuition; Special Education Approval**

#### **2229.1 Enrollment: Requirements for Approved Independent Schools, Students, and LEAs**

(a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:

1. That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;
2. Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;
3. The school's process for making enrollment decisions when the number of applicants exceeds capacity;
4. That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. 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 eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.

(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 Subsection 2229.4 (Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in Subsection 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

(c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Subsection 2229.4, 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 2229.4(f), below.

(d) This Subsection, 2229.1, shall not apply to a therapeutic independent school.

#### **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. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

### **2229.3 Assurances**

The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:

(a) Demonstrating an understanding of special education requirements, including:

1. Provision of a free and appropriate public education in accordance with federal and state law.
2. Provision of education in the least restrictive environment in accordance with federal and State law.
3. Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law.
4. Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.

(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress.

(c) Employing or contracting with staff who have the required licensure to provide special education services.

(d) Agreeing to communicate with the responsible LEA concerning:

1. Development of, and any changes to, the IEP.
2. Services provided under the IEP and recommendations for a change in the services provided.
3. The student's progress.
4. Maintenance of the student's enrollment in the independent school.
5. Identification of students with suspected disabilities.

(e) Committing to participate in dispute resolution as provided under federal and State law.

**2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools**

(a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 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.

(b) The LEA and the approved 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. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.

(c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding Subsection 2364.3(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.

(e) To ensure the provision of services in the student's IEP, the approved 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 approved independent school recruiting and hiring special education or other professional or paraprofessional staff;
2. The approved 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 approved 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 approved 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 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.



(g) If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Subsection 2226.2 (Revocation or Suspension of Approval) due to its failure to enroll or continue to enroll the student.

h) This Subsection, 2229.4, shall not apply to a therapeutic independent school.

#### **2229.5 Out-of-State Programs**

(a) Subject to the provisions of 16 V.S.A §828, unless otherwise determined by the Board, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

**Commented [SB36]:** Ensures consistency with 2228.2

(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.

#### **2229.6 Approval Procedures to Receive Public Funds**

(a) Application for public funds approval shall be made at the time of application under Sections 2224 et seq. An independent school that has already obtained independent school approval from the Board may at any time submit an application for public tuition approval to the Secretary.

(b) The procedures for public tuition approval shall be the same as those for approval in accordance with Section 2224 et seq. To the extent possible, these procedures shall occur simultaneously.

#### **2229.7 Notification**

After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board under Subsection 2226.2 (Revocation or Suspension of Approval) for a change to a school's approval status, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the Board. If the school disagrees with the proposed change to its approval status, the Board shall hear the matter in accordance with the requirements of Section 1230, et seq.

#### **2229.8 Minimum Level of Service**

Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973., if those services are offered according to a written agreement with the sending responsible agency, as required by Section 2231.

**Section 2230. Placement Prohibition**

No responsible agency, as defined by Subsections 2360.3, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Section 2229, unless the placement is pursuant to:

- (a) Subsection 2230.1;
- (b) A court order; or
- (c) A hearing officer's order.

**2230.1 Exceptional Circumstances – Approval Process**

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Section 2224 but that has not been approved to receive public tuition under Section 2229. In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the Board pursuant to 16 V.S.A. § 828.

(a) Exceptional circumstances exist when:

1. After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Section 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and
2. The proposed placement is deemed appropriate by the child's IEP team.

(b) The Secretary may specify conditions under which the placement is to be carried out.

**Section 2231. Written Agreements Required**

**2231.1 Agreement as to Costs**

(a) In order to obtain approval to receive public tuition, an independent school shall assure the Board that, prior to enrolling a child pursuant to Subsection 2229.1, the school will enter into a written agreement with the LEA committing to the requirements set forth in Subsection 2229.3 and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.

(b) The Secretary shall consult with independent schools in the State and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.

(c) An approved independent school that enrolls a student with an IEP pursuant to Subsection 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.

(d) An approved independent school that enrolls a student under Subsection 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

#### **2231.2 Agreement as to Non-Instructional Services.**

In order to obtain approval to receive public tuition, an independent school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.

#### **Section 2232. Rate Approval for Therapeutic Approved Independent Schools.**

(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.

(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.

(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under

subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.

(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:

1. Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:

- (A) Salaries for all employees and full-time equivalents as applicable
- (B) Program-related Contractual Services
- (C) Operations-related Contractual Services
- (D) General Operating
- (E) Program
- (F) Travel/Transportation
- (G) Building - Direct
- (H) Building - Allocated
- (I) Admin I - Allocated
- (J) Admin II - Allocated
- (K) Fringe - Allocated

2. The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.

(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.

(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.

(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:

1. Establish standards for developing and applying a database of comparable information to be utilized in rate determinations, and publish the standards on the Agency's website.
2. Annually update the database of comparable information.
3. Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.

(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).

(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.

(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.

(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the Board in accordance with the requirements of Section 1230, et seq. Alternatively, a therapeutic school may appeal to the Board pursuant to Section 1230, et seq. without first seeking reconsideration by the Secretary. The Board's determination of the appeal shall be final.

#### **Section 2233. Standards and Regulations.**

The Board shall afford the opportunity for approved independent schools to participate in the development and revision of state standards that apply to independent schools.

**Section. TBD Effective Date**

**TBD**

**Commented [SB37]:** From EQS: 2128 Effective Date

Amendments to the Series 2000 Education Quality Standards Sections 2100 (Statutory Authority), 2110 (Statement of Purpose), 2111 (Adoption of Content Area Standards), and 2114 (Definitions). These rules, except as otherwise specified herein, shall become effective 15 days after adoption is complete in accordance with 3 V.S.A. § 845(d). Amendments to all remaining Sections of the Education Quality Standards will take effect on July 1, 2025.

