

Vermont State Board of Education Manual of Rules and Practices

Series 2200 – Independent School Program Approval

**CVR 22 000 004
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Section-~~Rule~~ 2200 Independent School Program Approval-

~~Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).~~

Commented [SB1]: Not needed anymore.

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.

In addition to the non-discriminatory protections in Subsection 2226.7 (Assurance of Compliance with State and Federal Laws), 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 2226.7 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 [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 RuleSection 2223.3, Section 2224 or Section 2226, and Section 2227, as well as the requirements in SBE RuleSection 2225 (tuition from public funds), and SBE Rule 2226 (Application).

Approved Independent School Ineligible to Receive Public Funds: means an independent school that meets the requirements in SBE Rules 2226 (Application) and 2227 (Approval) Section 2223, Section 2224 or Section 2226, and Section 2227 but does not meet the requirements of rules concerning the delivery of special education services in SBE RuleSection 2229.

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

Caste: means a hierarchical social systems 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.

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 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.

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

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 and Technical Education, **Civic and Community Engagement**, College and Career Readiness, **Critical Thinking**, **Culturally Responsive Teaching**, Education Support Team, Educational Technology, Educator Mentoring, Evidence-based, **Intercultural Competency**, **Interdisciplinary**, 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]: Clarifies that the only difference in the approval and continued compliance requirement between the two types is the delivery of special education in return for public funds.

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.

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 [SBE Rule 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.

~~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 1972, 20 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.~~

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, 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 identify 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 ~~SBE Rule~~Subection 2360.2.12.

Student: means a person age three through age twenty-one.

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 ~~SBE Rule~~Section 2225.

Section 2223 Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds-

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary. An application for approval shall meet the requirements of ~~SBE Rule~~Section 2226 (Application) or Section 2224 (Alternate Approval Process) which shall include an affirmation of compliance with applicable laws and rules. The Secretary shall prepare and make

available a simplified form to be used to meet the requirement of this section. Upon receipt of a complete application for initial approval or renewal of approval under Section 2226, the Secretary shall appoint a review committee of at least two persons.

2223.1 Visit-

The review committee shall 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.

2223.2 Report-

The review committee shall examine the application materials and consider findings from its site visit and submit ~~write~~ a report, including a written initial recommendation regarding approval, to the Secretary. A copy of the initial recommendation report shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the ~~State~~ Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

2223.3 General Conditions for Approval-

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, including this Section, RuleSection 2226 (Application) or Section 2224 (Alternate Approval and Renewal), and RuleSection 2227 (Approval), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Approval). ~~Effective July 1, 2023, an independent school that intends to accept public tuition must also meet the requirements of SBE Rule 2229. A~~ Effective July 1, 2023, a school meeting approval requirements in this Section, SBE RuleSections 2226 or Section 2224, (Application) and Section 2227, (Approval) but not RuleSection 2229 (Approval to Receive Public Tuition, Special Education Approval) may be recommended for approval but may not receive public tuition.

2223.4 Review-

The Secretary shall designate a date for action by the Board. Officials of the school shall be notified of this date.

2223.5 Reapplication renewal-

Not less than six months prior to expiration of a school's approval, the Secretary shall send ~~an application packet and~~ a letter notifying the school of the date that its current approval is scheduled to end, notice that it must reapply to maintain its approval status without interruption, a copy of any application materials, including the compliance assurance form, notice of the date that when the site visit described in Subsection 2223.1 (Visit) will occur, if applicable, and the date will occur ~~and~~ that the completed application must be received from the school, which shall be not later than 30 days prior to the scheduled site visit.

2223.6 ExtensionContinued Approval-

Commented [SB5]: Unclear what is intended to happen here. Looking for guidance on clarifying this step in the process.

Suggestion: 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.

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

2223.7 Annual Compliance Assurance

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

(b) 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 it must be submitted to the Agency. A school whose submission is late will only be eligible to continue receiving public funds as of the date that the completed form has been received by the Secretary. Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above.

(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Secretary, it will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school and the Board when this occurs. If the school fails to submit an acceptable compliance assurance form to the Agency within 5 days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2223.10 (Complaints; Investigations), which shall be promptly followed by the due process set forth in 2223.9 (Revocation or Suspension of Approval). If, after a hearing, the Board determines that the school intentionally violated this subsection, it shall, pursuant to 2223.9 (b) decide whether to revoke, suspend, or impose conditions on the approval of an independent school or independent school ineligible to receive public funds.

2223.87 Termination-

Approval of an independent school that fails to complete timely application for ~~further approval~~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 2223.5 (Renewal). The Board may extend the reapplication period for good cause. -

2223.98 Revocation or Suspension of Approval-

Prior to recommending revocation or suspension of approval, the Secretary shall initiate a formal investigation pursuant to ~~Subsection rule~~ 2223.109 (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 ~~State~~-Board of the recommendation and provide notice to the school. The ~~State~~-Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

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

~~1) (4)~~ Failure to demonstrate that the school has the resources required to meet its stated objectives;

~~2) (2)~~ Failure to comply with statutory requirement or the Board's rules for approved independent schools, including failure to submit an annual compliance assurance;

3) ~~(3)~~ Failure to report any of the financial events listed in (b) below; or

~~4) (4)~~ Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166.(b)(4).

(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 ~~State~~ 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 ~~State~~ 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 ~~State~~ Board.

(e) If the ~~State~~ Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the ~~State~~ 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 ~~State~~ Board should take if it makes this finding, the ~~State~~ 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).

2223.109 Complaints; Investigations-

(a) The Secretary shall conduct an initial investigation of reports or complaints related to the approval standards and laws that apply to approved independent schools. If, following an initial investigation, the Secretary finds a violation of approval standards or laws that apply to approved independent 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 independent 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 independent school may appeal the imposition of probation to the ~~State~~ 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 BE Rule 2223.9~~ (Revocation or Suspension of Approval)⁸ 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 2224 ~~Approval and Reapproval Process Reciprocity for Currently Accredited~~ Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.

2224.1 Approval

~~Approval may be granted without committee evaluation and the approval process~~^I in the case of any independent school seeking approval that has been accredited by a recognized accrediting agency pursuant to Subsection 2224.2 (Recognized Accrediting Agency) within the last five years, approval may be granted under Subsection 2227.15, upon submission of an abbreviated application as described in Subsection 2226.14 (Abbreviated Application)³ and evidence of its accredited status, but without a review committee site visit set forth Subsection 2223.1 (Visit).

2224.2 Recognized Accrediting Agencies

Any accrediting agency that is a recognized member of the International Council Advancing Independent School Accreditation (ICAISA) will be considered a recognized accrediting agency for the purposes of this rule and 16 V.S.A §166. Additionally, the Board shall continue to recognize accrediting agencies listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024.

2224.3 Continued Accreditation

~~A school accredited by a recognized accrediting agency pursuant to Subsection 2224.2 (Recognized Accrediting Agencies) state or regional agency recognized by the State Board school shall notify the Agency within five days of any change to its accreditation status.~~

2224.4 Reapplication

The Secretary shall notify each school 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. The same application process described in Subsection 2224.1 shall apply, except that any school whose accreditation period exceeds five years must produce a ~~be supplemented with an~~ interim report from the accrediting agency during the last year of its five-year approval by the Board that provides information necessary to assure the Board that the school ~~meets is meeting~~ the approval

standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the approval process set forth in [Section 2223 \(Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds\)](#), [Section 2226 \(Application\)](#), and [Section 2227 \(Approval\)](#), prior to expiration of its current approval period by the Board. ~~A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency within five days of a change to its accreditation.~~

Section 2225 Tuition from Public Funds.

2225.1 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 [Subsection 2223.5 \(Annual Compliance Assurance\)](#), ~~SBE Rule~~[Section 2226 \(Application\)](#), ~~SBE Rule~~[Section 2227 \(Approval\)](#), or [Section 2224 \(Alternate Approval Process\)](#), as well as ~~and SBE Rule~~[Section 2229 \(Approval to Receive Public Tuition, Special Education Tuition\)](#). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

Commented [SB6]: Inserted requirement for Annual Compliance Assurance

(a) There is an order from a court or from a due process hearing pursuant to ~~SBE Rule~~[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 ~~SBE Rule~~[Subsection 2230.1 \(Exceptional Circumstances – Approval Process\)](#).

2225.2 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~~[Section 2226. Application for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.](#)

An application for initial approval or renewal of approval shall contain the following:

2226.1 Basic Information

The name and address of the school.

2226.2 Mission Statement

A statement of the school's philosophy and purpose.

2226.3 Enrollment Policy

A description of the school enrollment including a statement of how it is designed to serve children with disabilities.

2226.4 Organization

A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

2226.5 **Delivery of Education**

A description of the curriculum, methods of instruction, evaluation procedures and special services that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A. § 906 and assurances that school meets the requirements of (a) and (b) below. ~~6.~~

Commented [SB7]: Adds EQS 2120.1 and 2120.5

(a) 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.

(b) Curriculum Content.

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

2) 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.

2226.6 Evidence of Compliance with Local, State, and Federal Laws

Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following:

(a) (1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, 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.

(b) (3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable state and federal requirements.

(c) Evidence of compliance with local, state, and federal requirements pertaining to the health, safety, and privacy of students, including the most recent annual fire safety inspection.

2226.7 Assurance of Compliance with State and Federal Laws

Evidence of compliance with local, state, and federal requirements pertaining to the health and safety of students. Assurances by the Head of School that the school complies with the following provisions, using an unmodified form prepared by the Agency:

(a) (b) An assurance, signed by the Head of School, that the school complies with the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6 in all aspects of the school's recruitment, hiring, and employment activities.

~~(b)-(2)~~ An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.

~~(c)~~ An assurance that no student 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 [SB8]: Integrates EQS 2113

~~(d)~~ An assurance the 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.

~~(e)~~ An assurance that the school maintains 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 [SB9]: Incorporates EQS 2122.1

~~(f)~~ An assurance that the Board has adopted harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e).

~~(e)~~ An assurance of compliance with state and federal requirements pertaining to the health, privacy, and safety of students.

(g) An assurance of compliance 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.

(h) An assurance of compliance with legal requirements concerning nondiscriminatory school branding.

2226.8 Staffing

Statements regarding ~~professional~~ staff qualifications, development, duties, and operational matters as outlined in the following sections, including:

2226.8.1 Professional Staff qualifications.

~~(a)-(1)~~ A job description for each position or a statement describing training, experience, and degree(s) required for each position.

~~(b)-(2)~~ A resume, vita, or description of appropriate qualifications for each current staff member.

~~(c)-(3)~~ Current assignment of each professional staff member.

2226.8.2 Professional Staff Development.

- (a) A general statement of the institution's expectations for professional growth of staff.
- (b) A statement describing the school's inservice training and financial and other support given to staff for professional development.
- (c) A description of professional development in the prior two years.

2226.8.3 Professional Environment.

- (a) A list of staff and length of service.
- (b) A description of staff meetings.
- (c) A description of other staff duties that are not related to teaching or administration duties.

2226.9 Financial Status

Evidence of financial capacity, which may be shown by one of the following:

- (a) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;
- (b) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;
- (c) An audit from the present or prior fiscal year performed by a certified accounting firm; or
- (d) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity.

2226.10 School Calendar

The school calendar.

2226.11 Disclosure Assurance

Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A. § 166-(b)(3).

2226.12 Record Maintenance and Retention

Copies of policies related to 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.

2226.13 Request to Receive Public Funds

A request to receive public funds together with any forms or required documentation pursuant to Subsection 2229.6 (Approval Procedures to Receive Public Funds), if applicable.

2226.14 Abbreviated Application

Commented [SB10]: Integrates part of EQS 2113

A school applying for approval under the alternate approval process described in Section 2224 shall submit an application consisting of the following components:

(a) Evidence of Accreditation Status;

(b) Enrollment Policy pursuant to 2226.3;

(c) A completed and unmodified Assurance of Compliance with State and Federal Laws described in 2226.7;

(d) Additional Attestation of compliance with

(1) subsection 2226.5(a) (Instructional Strategies),

(2) subsection 2226.5(b) (Curriculum Content),

(3) maintaining student record retention policies pursuant to 2226.12 (Record Maintenance and Retention), and

(e) 2226.13 (Request to Receive Public Funds), if applicable.

Commented [SB11]: This may be made simpler by reworking the overall framework. The lengthy requirements for approval for ALL schools might be inserted into 2223 and 2226 could define the paperwork required in each category of application (non-accredited and accredited school).

Commented [SB12]: Integrates part of EQS 2113

~~Section~~ Section 2227 Approval of Application.

The Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to 16 V.S.A. § 906. and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, 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 ~~State~~ Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The Board shall make the following findings prior to approval:

2227.1 The description of the school in the approval application is accurate.

2227.2 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.

2227.3 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.

2227.4 The school has classroom, laboratory, library, and other facilities necessary to operate its program.

2227.5 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:

2227.5.1 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.

2227.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2227.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

2227.7 The school employs a sufficient number of professional staff for the population served.

2227.8 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.

2227.9 The school maintains a register of the daily attendance of each of its enrolled students.

2227.10 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.

2227.11 The school has the financial capacity to carry out its stated objectives for the period of approval. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

2227.12 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.

2227.13 The school complies with legal requirements concerning nondiscriminatory school branding.

2227.14 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.

2227.15 In the case of a school seeking approval or renewal under Section 2224, the Board need only find that the school is accredited and deemed in good standing by a recognized accrediting agency under 2224.2 within the last five years and that the abbreviated application and materials submitted

sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906, and that it substantially complies with the Board's rules for approved independent schools.

Section 2228 Length of Approval-

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

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 ~~race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or State law; 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 [SB13]: Made consistent with EQS 2113 and above.

(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 2229.4, after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in ~~Rule~~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 ~~Rule~~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 Rule~~Subsection 2229.4(f), below.

(d) This ~~Rule~~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) (4)~~ Provision of a free and appropriate public education in accordance with federal and ~~s~~State law.

~~2) (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 ~~State~~-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 ~~SBE Rule~~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) 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 ~~RuleSection~~ 2223.8 due to its failure to enroll or continue to enroll the student.

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

2229.5 Out-of-State Programs-

(a) 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.

(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 ~~SBE RuleSections~~ 2223 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) Application for special education funding approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.

(c) The procedures for public tuition approval shall be the same as those for approval in accordance with ~~SBE RuleSection~~ 2223 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 ~~RuleSubsection~~ 2223.8 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 ~~SBE RuleSection~~-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 ~~SBE Rule-Section~~ 2231.

2229.9 Timely Submission of Annual Compliance Assurance

Approved independent schools authorized to receive public funds under this Section shall not be permitted to receive reimbursement for costs incurred during any time under which a complete current compliance assurance has not been submitted to the Agency.

Section 2230 Placement Prohibition-

No responsible agency, as defined by ~~SBE Rule-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 ~~RuleSection~~ 2229, unless the placement is pursuant to:

- (a) ~~RuleSubsection~~ 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 ~~SBE RuleSection~~ 2223, et seq. but that has not been approved to receive public tuition under ~~RuleSection~~ 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 ~~State~~-Board pursuant to 16 V.S.A. § 828.

- (a) Exceptional circumstances exist when:

~~1)(4)-~~After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to ~~SBE RuleSection~~ 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and

~~2) (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 ~~State~~ Board that, prior to enrolling a child pursuant to ~~Rule~~Subsection 2229.1, the school will enter into a written agreement with the LEA committing to the requirements set forth in ~~Subsection~~ ~~SBE Rule~~ 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 ~~Rule~~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 ~~SBE Rule~~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)(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 ~~State~~ Board in accordance with the requirements of ~~SBE Rule~~Section 1230, et seq. Alternatively, a therapeutic school may appeal to the ~~State~~ Board pursuant to ~~SBE Rule~~Section 1230, et seq. without first seeking reconsideration by the Secretary. The ~~State~~ Board's determination of the appeal shall be final.

Section 2233 Standards and Regulations.

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

Section TBD Effective Date

TBD

Commented [SB14]: 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.