

AGENCY OF EDUCATION  
Barre, Vermont

**TEAM:** Legal and Finance

**ACTION ITEM:** Will the State Board of Education approve the proposed updates and revisions to the Post-Secondary Certification Rule beginning at Rule 2240 and ending at Rule 2266 in the State Board Manual of Rules and Practices as attached and authorize the Agency of Education to proceed with filing the Final Proposed Rule with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR)?

**RECOMMENDED ACTION:** That the State Board of Education approve the proposed updates and revisions to the Post-Secondary Certification Rule beginning at Rule 2240 and ending at Rule 2266 in the State Board Manual of Rules and Practices as attached and authorize the Agency of Education to proceed with filing the Final Proposed Rule with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

**STATUTORY AUTHORITY:** 16 V.S.A. § 175(f)

**BACKGROUND INFORMATION:** The State Board of Education opened the Post-Secondary Certification Rule for revision at its August 18, 2015 meeting. The proposed rule was filed with the Interagency Committee on Administrative Rules (ICAR) and was reviewed at ICAR's April 11, 2016 meeting. ICAR voted to approve the rule with one change to the format of a statutory reference, (using "16 V.S.A." instead of "Title 16"). There were no substantive changes to the proposed rule.

AOE staff made the changes approved by ICAR and filed the proposed rule with the Secretary of State's Office (State Archives and Records Administration) on May 9, 2016. The Secretary of State's Office published a notice of rulemaking online and in newspapers. The public comment period started on May 9, 2016 (date of filing). The Agency held a meeting in Barre on June 21, 2016 from 5:00-6:00 p.m. for the public to appear and give comments on the proposed rule. The Agency also posted the proposed rule on its website which provided an additional avenue to receive written public comments on the website. No member of the public appeared at the meeting and the Agency did not receive any written public comments. The period for public comment ended on June 27, 2016 at the close of business.

The next step in the rule-making process is to file the Final Proposed Rule with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

LCAR has forty-five (45) days to review the proposed rule and will vote to approve as is, approve with modifications, object or file a certified objection. The Agency is permitted to respond should LCAR vote to object to the rule. Thereafter the Adopted Rule is filed at the Vermont State Archives and the rule goes into effect 15 days from the date it was adopted.

Copy of the draft rules to be submitted to LCAR is attached.

**COST IMPLICATIONS** (i.e., Monetary Resources; Staff Resources): The original estimated cost for the rule-making process was \$2,200. This is the flat rate that the Secretary of State charges state agencies for statutory publication of proposed rules. No additional costs other than staff time have been incurred to date.

**STAFF AVAILABLE:** Clare O'Shaughnessy, Legal  
Cassandra Ryan, Finance

Section 2240 Certification of Postsecondary Schools.

2240.1 Definitions

2240.1.1 "Postsecondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing postsecondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a postsecondary school for the purposes of registration and certification.

2240.1.2 "A postsecondary school whose primary operation is in, the state of Vermont" means a postsecondary school which offers the majority of its courses in an institution in Vermont or which maintains its principal administrative offices in Vermont and offers postsecondary courses in Vermont.

2240.1.3 "Confer a degree" and "degree-granting authority", for the purposes of these rules, mean the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a postsecondary school doing business in Vermont. An out-of-state postsecondary school which offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

2240.1.4 "Business organization", for the purposes of 16 V.S.A., § 176(d)(1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

Section 2241 Certification of Vermont-Based Postsecondary Schools.

2241.1 Statutory Authority 16 V.S.A., § 176

2241.2 Registration

Any person who desires to operate a postsecondary school in Vermont, which shall have its primary operation in Vermont, shall file with the Secretary prior to commencing operation a statement of intent to operate which shall include the following information:

(a) Name, location and legal nature of the school including affiliations with other organizations, if any.

(b) Name and title of the chief administrative official.

(c) Operating calendar of the school.

(d) A concise description of the program(s) to be offered including details of any online delivery.

(e) A description of the proposed student body including a projection of the size and level of education at admission.

(f) Assurance that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(g) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities.

(h) A notice to applicants for enrollment that the school does not possess degree-granting authority.

### 2241.3 Application for Certificate of Approval

A person desiring a certificate of approval from the State Board of Education shall file an application with the Secretary within eighteen months after admitting the first student. A person may file an application for a certification of degree granting authority at any time but may not operate beyond eighteen months after admitting the first student unless an application for a certificate of approval has been filed. The application shall indicate the certification sought and shall include a description of the school which contains the following:

(a) The name, location and legal nature of the school including a copy of the articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) which the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from

students.

(h) A description of the school's plant, library and equipment.

(i) A description of academic programs including their level, site, and length. The application shall set forth, if any, the minimum credit requirements.

(j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) Official website address, a copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

Section 2242 Certification of Postsecondary Schools Doing Business in Vermont Whose Primary Operation Lies Outside of Vermont.

2242.1 Statutory Authority 16 V.S.A., § 176a

2242.2 Application for Certificate of Approval

A person desiring a certificate of approval from the State Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under Rule 2240.1.3. The application shall include a description of the school which contains the following:

(a) The name, location and legal nature of the school including a copy of articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) which the school proposes to offer.

- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school including a description of its governance, administration and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited, financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's plant, library and equipment.
- (i) A description of academic programs including their level, site and length. The application shall set forth, if any, the minimum credit requirements.
- (j) A statement regarding the school's professional staff including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body including its size and level of education at admission, methods of recruitment and available financial aid resources.
- (l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities.
- (n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.
- (o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.
- (p) Documentation of accreditation by any regional, national or programmatic institutional accrediting agency recognized by the US Department of Education.

## Section 2243 Review Process-Schools Chartered in and Out of Vermont.

### 2243.1 Review of Application for Certificate of Approval for Schools Chartered in and out of Vermont

Upon receipt of an application for certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of postsecondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont postsecondary school or representative organization. The team shall review the application and shall verify its contents, if necessary, by visiting the school. The team shall present written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of this recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board.

### 2243.2 Review of Application for Certificate of Degree Granting Authority

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of Rule 2243.6.1 are met, the Secretary shall contact the Vermont Higher Education Council which shall review the application and determine the accuracy of its contents, if necessary, by visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board. The State Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

### 2243.3 Renewal of Certification

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification.

Any school seeking renewal, that has obtained initial approval to offer or operate a program of college or professional education for credit or degree, on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the US Department of Education, in order to be considered eligible for renewal by the State Board.

#### 2243.4 Costs of Review

Postsecondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 VSA §177 to the Vermont Agency of Education to cover the costs of services related to the certification. In addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 VSA §177 to the Vermont Agency of Education a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

#### 2243.5 Criteria for Issuance of a Certificate of Approval

To be issued a certificate of approval, an applicant shall demonstrate the following:

##### 2243.5.1 Resources Required to Meet Stated Purposes

The school shall submit a clear and specific statement of purpose regarding the education which it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

##### 2243.5.2 Stability

(a) Sources of Income. The school shall have a plan for financing each proposed degree eve or program. The plan shall specify the dollar amounts and proportions of income by source, including but not limited to:

- (1) tuition and fees,
- (2) other school generated funds,
- (3) federal or state funds, and
- (4) private funds.



(b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.

(c) Management. The school shall operate under a governing structure which clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

### 2243.5.3 Disclosure

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission or transfer of credit. The following information shall be disclosed on the school's website and in a general catalogue, bulletin or other public information document provided to prospective students prior to enrollment:

- (a) Name and physical address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.
- (f) An accurate list of all educational activities.
- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational

providers and full-time educational providers.

(l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.

(m) Requirements for graduation.

(n) Statement of certificates or diplomas awarded upon graduation, if any.

(o) Statement of degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state postsecondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.

(p) System of grading or evaluation.

(q) The school's policy establishing standards for determining adequate progress.

(r) Availability and extent of such student services as job placement service, counseling for Academic and personal problems, food service facilities, and parking facilities.

(s) The availability of financial aid.

(t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, state Veteran's Affairs-approving agency course approval and state certification.

(u) The school's policy regarding refund of tuition and other fees collected in advance of enrollment or class attendance.

(v) The schools "closing" policy establishing procedures which will be followed in the event that a determination is made to cease operation.

(w) The school's student records policy with provisions regarding access, disclosure and the cost of copies.

(x) A statement that credits earned at the school are transferable only at the discretion of the receiving school.

#### 2243.5.4 Facilities

The school's facilities shall meet all applicable state, federal and local fire, safety, health and access standards.

#### 2243.5.5 Student Records

The school shall have adequate procedures for the safe keeping of student records and for complying with the requirements of 16 V.S.A., § 175.

#### 2243.5.6 Waiver of Requirements for certification

A school which believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

#### 2243.6 Criteria for Issuance of a Certificate of Degree Granting Authority

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

##### 2243.6.1 Degree Criteria

Schools desiring to offer postsecondary degrees including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met. Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences. Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences. Candidates for a degree shall be required to complete a coherent program of study.

##### 2243.7 Certification Limitations

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms or limitations as the Board deems necessary. A school which has been granted either a certificate of approval or a certificate of degree granting authority shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State Board may require a school to reapply for certification following program changes which are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

##### 2243.8 Denial, Approval with Stipulations, Revocation or Suspension of Certification

###### 2243.8.1 Process

Prior to recommending denial, approval with Stipulations, revocation or suspension of certification to the State Board, the Secretary shall notify in writing the school of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or his or her designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

#### 2243.8.2 Criteria for Revocation or Suspension

The Board may suspend or revoke certification for good cause. Good cause shall include, but not be limited to:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation; or
- (g) Refusal to permit team evaluation or other investigations provided for under these regulations.
- (h) Change in accreditation status.

#### 2243.8.3 Investigations

The Secretary may conduct any investigations of a school deemed necessary and appropriate in order to insure compliance with the terms of these regulations. A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

#### Section 2250 Preservation of Postsecondary Institutions' Student Records.

##### 2250.1 Statutory Authority: 16 V.S.A., § 175

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board of Education. The State Agency of Education, is authorized to insure that the student academic records are in appropriate form. The

institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2 Maintenance of Academic Records. Each institution of higher education operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

Monitoring. Upon reasonable notice, every institution shall make available to a representative of the State Board of Education its student records for the purpose of ensuring compliance with this regulation. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

Return of Records. A repository may duplicate the records of an institution and then return the original records to the institution.

Institutions Discontinued Prior to April 25, 1979. The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A., § 175 and these regulations.

2250.3 Form and Contents of Academic Records. The permanent academic record of each student registered for credit at a postsecondary institution which operates in this state, whether or not such institution is chartered in this state, shall contain at a minimum:

- (a) the identification of the institution;
- (b) the identification of the student;
- (c) the record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress;
- (d) periods of enrollment covered by subparagraph (c) above;
- (e) the student's status at the close of the last period of enrollment; and
- (f) degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

2266 Postsecondary, Online, or Correspondence Schools

An online or correspondence school which offers postsecondary credits or degree(s) shall also meet the applicable requirements of 16 V.S.A. §§176 and 176a.