

State Board of Education

Date July 29, 2016

Item J

AGENCY OF EDUCATION

Barre, Vermont

TEAM: Legal/Finance—Private Education Programs

ACTION ITEM: Will the State Board of Education vote to authorize the Agency of Education to pre-file the proposed revised amendment of SBE Rule 2200 series and Rule 7000 series (Rule 7320 only) including Rule 2200 et seq. 2230.4, Private Education Programs (including Distance Learning Schools, Corrections Education, Tutorial Programs, and Private Kindergarten Programs), with the Interagency Committee on Administrative Rules (ICAR) for review by the Committee to begin the Administrative Rule-Making Process?

[J – attachment – SBE Resolution](#)

[Ja – Redline version - Rule 2200](#)

[Jb – Clean version - Rule 2200](#)

[J1 – Letter – Burr & Burton Academy](#)

[J2 – Letter - VT Independent Schools Association](#)

[J3 - Independent Schools Approved For Special Education](#)

[J4 - Commission On Independent Schools - Standards For Accreditation](#)

[J5 - VISA Responses to State Board of Education Rule Proposals](#)

[J6 - Comparison of Accredited vs. Approved Independent Schools in Vermont](#)

[J7 - VSBA Resolution on Public Funds to Independent Schools](#)

[J8 – Letter – VT School Board’s Association](#)

RECOMMENDED ACTION: that the State Board of Education authorize the Agency of Education to pre-file the proposed revised amendment of SBE Rule 2200 series including Rule 2200 et seq. 2230.4, Private Education Programs (including Distance Learning Schools, Corrections Education, Tutorial Programs and Private Kindergarten Programs) and Rule 7000 series (Rule 7320 only) with ICAR for review by ICAR to begin the Administrative Rule- Making Process.

STATUTORY AUTHORITY: 16 V.S.A. §164(14)

BACKGROUND INFORMATION: On November 17, 2015, the State Board of Education ordered the Agency of Education to engage a comprehensive review of the independent school rules of the State Board and to propose revisions to the independent school rules in alignment with the Board's policy directive (of November 17, 2015). The Board's policy directive of November 17, 2015 is attached as Exhibit 1. The Rule 2200 series also includes Distance Learning Schools, Corrections Education, Tutorial Programs and Private Kindergarten Programs, which are also amended within this proposed rule revision. The proposed revised Rule 220 series and a related rule within the Rule 7000 series are attached for the Board's review. These proposed rules represent the Agency's best effort to administer the Board's policy directive of November 17, 2015 to the Agency.

POLICY IMPLICATIONS: Updating the approval process rules for independent schools to reflect current best practices, consistency of reporting/fiscal accountability, equal opportunity and equity, and enhanced quality assurance for approved schools receiving public money, as set forth above, including Distance Learning Schools, Corrections Education, Tutorial Programs and Private

Kindergarten Programs.

COST IMPLICATIONS (i.e., Monetary Resources; Staff Resources): \$2,200. This is the flat rate that the Secretary of State charges state agencies for statutory publication of proposed rules. Also, the Agency may incur fees for any public meeting it holds to solicit public comment. Any such fee is expected to be an ancillary cost to the Agency.

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State Board of Education

November 13, 2015

**Initiation of a Comprehensive, Periodic Review of the
2200 Series of the SBE Rules and Practices**

Whereas, the state board rules concerning the “evaluation of private education programs” (2200 series) have not been revised since 2001, and

Whereas, a broad number of changes have occurred in society and in education during that time, and

Whereas, many rules and practices may now be inadequate or antiquated; and

Whereas, Goal Two of the state board’s strategic plan calls for a review and updating of state board rules; and Goal One calls for identifying the magnitude and causes of the achievement gap;

The state board of education requests the Secretary of Education to recommend to the state board revisions to these rules and practices in order to modernize, and make them more efficient.

Specifically, the board provides the following guidance to the secretary and requests her recommendations on --

- Updating antiquated language - The board requests the secretary’s recommendations on updating the language and the system, in whole and in part.
- Fiscal Accountability – The law requires the state board to assure that each school has adequate resources. The board considers the current rules insufficient to meet this statutory requirement. The board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.
- Equal Opportunity and Equity – Currently, the provisions for assuring equal access and admission to private schools are not sufficient. It is the view of the state board that equal opportunities must be available to all in admissions, program availability and discipline; and that the rules explicitly address these issues.



- The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The board requests that independent schools be evaluated periodically using a NEASC system.
- Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The board realizes that certain schools may specialize in providing services for certain handicapping conditions, and that circumstances will vary.

The board requests an update on progress at the December 2015 meeting and a draft of proposed rule revisions at the January 2016 meeting. Further activities and calendar markers will be determined in January 2016.



2200 ~~Evaluation of Private Education Programs~~ Independent School Program Approval

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2220 Approval of Independent Elementary and Secondary Schools

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~~Statement of Purpose.~~

~~The purpose of independent school approval rules is to assure acceptable educational opportunities for students enrolled in Vermont's independent schools.~~

~~Statement of Purpose, Vermont State Board of Education, November 17, 2015:~~

~~Whereas, the State Board rules concerning the "evaluation of private education programs" (2200 series) have not been revised since 2001, and~~

~~Whereas, a broad number of changes have occurred in society and in education during that time, and~~

~~Whereas, many rules and practices may now be inadequate or antiquated; and~~

~~Whereas, Goal One of the State Board's strategic plan calls for identifying the magnitude and causes of achievement gaps;~~

~~And Goal Two of the State Board's strategic plan calls for a review and updating of State Board rules;~~

~~The State Board of Education requests the Secretary of Education to recommend to the State Board revisions to these rules and practices in order to modernize, enhance equity and quality, and make them more efficient. Specifically,~~

~~••Updating antiquated language - The Board requests the Secretary's recommendations on updating the language and the system, in whole and in part.~~

~~••Fiscal Accountability - The law requires the State Board to assure that each independent school has adequate resources. The Board considers the current rules insufficient to meet this statutory requirement. The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.~~

~~••Equal Opportunity and Equity - Currently, the provisions for assuring equal access and admission to private schools are not sufficient. It is the view of the State Board that equal~~

opportunities must be available to all in admissions, program availability and discipline; and that the rules explicitly address these issues.

@@The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The Board requests that independent schools be evaluated periodically using a NEASC system.

@@Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The Board realizes that certain schools may specialize in providing services for certain categories of disability and that circumstances will vary.

Definition:

“Approved independent schools” are schools that are eligible to receive public funding, and which as a condition of that approval, meet and maintain certain minimum standards, as set forth in these rules. The State allows use of public dollars for education in private institutions that meet the standards and state purposes defined in the approval rules.

2221 ~~Statutory Authority (includes, without limitation) 16 V.S.A. §164(14).~~

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16 V.S.A., § 166 and 16 V.S.A., § 2958(e).

2222 ~~Procedure Application for Approval.~~

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the ~~Commissioner~~ Secretary of Education. ~~Any independent schools seeking approved status as either an initial or renewal application shall comply with Rule 2223. Not less than 180 days prior to the expiration of an independent school’s approval, the Secretary shall send an application packet and a letter notifying the school that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time. which are recognized as provided for in 16 V.S.A., § 165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements § 2225~~ below:

~~Upon receipt of an application for initial approval or renewal of approval the commissioner shall appoint a review committee of at least two persons.~~

~~The process below (2222.1 to 2222.7) shall be followed.~~

~~2222.1 Visit.~~

~~The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the commissioner with other agencies of state government which inspect such facilities.~~

~~2222.2 Report.~~

~~The committee shall present a written recommendation regarding approval to the Commissioner. A copy of their recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before a recommendation regarding approval is made by the Commissioner to the state board. The report shall contain the findings of other agencies of state government which inspect such facilities.~~

~~2222.3 Review.~~

~~The Commissioner shall designate a date for action by the board. Officials of the school shall be notified of this date.~~

~~2222.4 Renewal.~~

~~Not less than six months prior to expiration of a Schools approval, the Commissioner shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received. from the school not later than 30 days prior to the scheduled site visit.~~

~~2222.5 Extension.~~

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

~~2222.6 Termination.~~

~~Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.~~

~~2222.7 Denial, Revocation or Suspension of Approval.~~

~~Prior to recommending denial, revocation or suspension of approval the Commissioner shall obtain the written recommendation of the Council of Independent Schools. If after~~

~~receiving the council's recommendation the commissioner determines that denial, revocation or suspension of approval is warranted s/he shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the board. Approval of an independent school shall be revoked or suspended by the board based on a finding that the school no longer meets the criteria for approval listed in section 2226.~~

~~2222.8 Investigations:~~

~~Reports or complaints to the commissioner concerning matters related to the approval standards shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the Commissioner including a member of the Council of Independent Schools. The team will conduct the investigation after initial inquiries and will inform the school of the results. 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 of Social and Rehabilitation Services. Reports concerning the safety of facilities, water supply, electricity, plumbing or waste disposal systems shall be referred to the department to the appropriate.~~

~~2222.9 Corrections Education Program:~~

~~To the extent applicable, the commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8 as if it were an independent school.~~

~~Section 2223 Reciprocity:~~

~~Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. Such accrediting agencies are listed in Rule 7320 of the Board Manual of Rules and Practices. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Department of Education by the accrediting agency or the school during the last year of its five year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown the school must undergo the approval process.~~

~~Section 2222.14 Tuition from Public Funds.~~

~~(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless:~~

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(i) the school is approved for special education purposes pursuant to these rules, and through a special education application process developed by the AOE that is consistent with the requirements of the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400), the Special Education Rules of the Vermont State Board of Education at State Board Rule 2360 et seq., and Chapters 99 and 101 of Title 16 of the Vermont Statutes Annotated.

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant

to Rule 7320 of the State Board's rules,

(iii) the school has an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable state or federal law, including, the Vermont Public Accommodations Act (codified at 9 V.S.A. § 4500 et seq.), the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 701 et seq), and the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400).

(iv) the school complies with all other state and federal laws and rules applicable to Vermont public schools including, without limitation providing a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

(v) the school has adequate financial resources to maintain operations and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule 7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. The Secretary may also recommend, as part of any approval recommendation to the State Board, that budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, that independent auditors be periodically employed by the applicant school, and any/all audit results be made available, in whole, to the Secretary, upon request.

2222.2 Tuition from Public Funds, Out of State Independent Schools

(a) In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accrediting agency recognized by the State Board and substantially comply with the approval standards set forth in these rules.

(b) In order for tuition to be paid to an independent school in another state that is a special purpose school that is substantially similar to Vermont special purpose approved school, the out of state special purpose school shall substantially comply with the approval standards set forth in Rule 2224.1 and Rule 2224.2 of these rules.

2222.3 Length of Approval

The Board may grant initial approval and renewal of approval for not more than five years. The approval term must track, and cannot exceed, a current period of accreditation status by an accrediting entity recognized by the State Board at Rule 7320.

2222.4 Extension

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

2222.5 Termination

Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

2222.6 Investigations

Reports or complaints to the Secretary concerning matters related to an approved independent school's adherence to approval standards as set forth in these rules shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the Secretary, including a member of the Council of Independent Schools. The review team shall promptly investigate the allegations, and report its findings, and any recommendation(s) to the Secretary, within forty-five (45) days. The Secretary, after receiving the report and any recommendation(s) of the review team, shall, after consulting with the Council of Independent Schools, make a recommendation to the State Board at its next scheduled meeting, or as soon as practicable, about the continued approval status of the school.

2222.7 Denial, Revocation or Suspension of Approval

If the Secretary, after consulting with the Council of Independent Schools, determines that denial, revocation or suspension of approval is warranted, he or she shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the State Board. Approval of an independent school shall be revoked or suspended by the State Board based on a finding that the school no longer meets the criteria for approval as set forth in these rules, including without limitation, (i) Rule 2222.1 and (ii) that the school has failed to adequately provide a learning and (as applicable) residential environment for students that is safe and healthy.

2223 Special Education Approval of General Education Independent Schools

In order for an independent school to receive approval for purposes of these rules, it must offer services to students with disabilities in each special education category of disability as defined in by the Special Education Rules of the State Board of Education at Rule 2360 et seq.

2223.1 Out-of-state Programs

Unless otherwise determined by the State Board of Education, in order for an out-of-state independent school to receive publicly funded Vermont students, the out-of-state independent school must 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.

2223.2 Special Provisions Applicable to Approved Independent Schools Providing Special Education Services and Local Education Authorities (LEA) Pursuant to the Individuals With Disabilities in Education Act (IDEA) and the Special Education Rules of the State Board of Education

- (a) There must be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative.
- (b) IEP Teams must identify the personnel to provide IEP services to students. The independent school must verify that the staff identified to provide services has adequate time available to provide services required by the student's IEP. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school.
- (c) General education teachers cannot be identified as service providers on IEPs unless they also have a special education endorsement.
- (d) Independent school staff must have a copy of the student's current IEP in order to implement the following IDEA requirements:
 - (i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - (ii) Each teacher and provider described in paragraph (d)(i) of this section is informed of--
 - (1) His or her specific responsibilities related to implementing the child's IEP;
and
 - (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (e) LEA's must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student.

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(f) When an IEP Team places a student in an independent school that only serves students with disabilities, IEP Teams, with input from the independent school staff, shall develop a reintegration plan for each student for return to the student's home school. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to the student's home school.

2223.3 Coordination With Responsible Sending Agency

An independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (a) maintaining educational and attendance records and disclosing them to the sending responsible agency and the student's parents;
- (b) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (c) implementing IEPs including documentation of student progress and creating and providing regular progress reports.
- (d) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- (e) these practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2223.4 Educator Licensure Requirements for Special Educators

An independent school shall satisfy the educator licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2223.5 Special Education Rates Charged by Independent Schools; Maximum Rate Set by Secretary

(a) The Secretary or his/her designee shall set a maximum rate that can be charged by receiving independent schools for the provision of special education services. The Secretary shall provide a form(s) that an applicant independent school shall complete which provides the Secretary with sufficient information on the previous year's actual costs of the applicant schools for the provision of special education services, beyond those services provided as part of the general education program and accounted for in the regular education tuition, in order that the Secretary has the necessary information to set a maximum rate for the coming school year.

(b) The maximum rate set by the Secretary is not intended to reflect the actual rate charged by the independent school. The actual amount charged shall be set by agreement between an independent school and sending district. The actual amount charged

- (i) cannot exceed the maximum rates set by the Secretary, and
- (ii) shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students.

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(c) An independent school applying for approved status under these rules must assure the State Board that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines actual costs associated with the student's attendance regarding the provision of IEP services.

2223.6 First-Time Applicant for Maximum Rate

An independent school applying for the first time for a maximum rate to be set by the Secretary shall estimate in its application a maximum rate that is as close to projected actual costs as possible, for the coming year, based on relevant factors including, without limitation, anticipated enrollment of students with special needs, nature of services required, and comparative data of other similarly situated independent school applicants for the past two (2) years; the Secretary shall make applications of other similarly situated independent school(s) available for this purpose.

2223.7 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students 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 local educational agency that has educational planning responsibility for the student.

2224 Independent Schools with a Specific State Purpose (e.g. therapeutic and rehabilitative programs)

There are certain approved independent schools and possibly (future) applicant schools that primarily operate solely for the purpose of providing a specific state purpose, such as a dedicated program of unique special education services, therapeutic services or rehabilitative services. These schools may not be suited, due to their specific mission, to serve all students, or serve all categories of disability as defined by the Special Education Rules of the State Board. Notwithstanding any other provision of these rules, Rule 2224.1 and Rule 2224.2 set forth the approval standards for independent schools with a specific state purpose.

2224.1 General Education Review and Approval and Fiscal Review of Independent Schools with a Specific State Purpose

In order to obtain general education approval, and ensure that the school has the resources to remain fiscally solvent during the period of an approval term, the school shall be accredited for academic and fiscal purposes by an accrediting entity recognized by the State

Board pursuant to Rule 7320 of the State Board's rules. In addition, the Secretary shall prescribe a form that requires the applicant school to document how it shall prioritize and provide a learning and (as applicable) residential environment for students that is safe and healthy and comply with any other applicable federal and state laws and rules as may be necessary, to the extent such laws or rules are not covered by the review of the accrediting body.

2224.2 Special Education Review and Approval of Independent Schools with a Specific State Purpose

In order to obtain special education approval the school shall meet the special education standards that apply to approved independent schools as set forth in these Rules, but only for the categories of disability served by the school.

2224.3 Rate Approval for Independent Schools Approved for Specific State Purposes

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Agency on or before July 1st of each year. The Secretary shall notify the independent school of the results of the review on or before August 15th of each year.

(b) If a request for a new rate approval is not submitted by July 1st, the most recent approved rate will be in effect until the following July 1st, when the next rate request is due.

~~2224.1 Tuition may not be paid from public funds to any elementary or secondary school not approved by the board.~~

~~2224.2 Tuition for Independent Schools~~

~~Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont child who has been determined eligible for special education unless:~~

~~(a) The school is approved for special education purposes pursuant to Rule 2228 et seq.;~~

~~(b) There is an order from a court or from a due process hearing pursuant to Rule 2365.1.6 requiring such payment, or~~

~~(c) The Commissioner has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).~~

~~2224.3 In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accredited or approved by the~~

~~host state or by an accrediting agency recognized by the State Board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.~~

~~Section 2225 Application.~~

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

~~2225.1 The name and address of the school.~~

~~2225.2 A statement of the school's philosophy and purpose.~~

~~2225.3 A description of the school enrollment including a statement of whether it is designed to serve children with a particular disability or with disabilities generally.~~

~~2225.4 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.~~

~~2225.5 A description of the curriculum, methods of instruction, evaluation procedures and special services which the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A., Section 906.~~

~~2225.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.~~

~~2225.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.~~

~~2225.8 Statements regarding professional staff including:~~

~~2225.8.1 Professional Staff qualifications:~~

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

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

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

2225.8.2 Professional Staff Development.

- ~~(1) A general statement of the institution's expectations for professional growth of staff.~~
- ~~(2) A statement describing the school's inservice training and financial and other support given to staff for professional development; and (3) A description of professional development in the prior two years.~~

2225.8.3 Professional Environment.

- ~~(1) A list of staff and length of service.~~
- ~~(2) A description of staff meetings.~~
- ~~(3) A description of other staff duties that are not related to teaching or administration duties.~~

2225.9 Evidence of financial capacity may be shown by one of the following:

- ~~(1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;~~
- ~~(2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;~~
- ~~(3) An audit from the present or prior fiscal year performed by a certified accounting firm;
or~~
- ~~(4) 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.~~

2225.10 The school calendar.

2225.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A., § 166(b)(3).

2225 Corrections Education Program

To the extent applicable, the Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within these rules, as may be applicable.

~~Section 2226 Approval:~~

~~The board may approve an independent school if it finds that:~~

~~2226.1 The description of the school in the approval application is accurate.~~

~~2226.2 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.~~

~~2226.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library services, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.~~

~~2226.4 The school has classroom, laboratory, library and other facilities necessary to operate its program,~~

~~2226.5 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:~~

~~2226.5.1 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.~~

~~2226.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.~~

~~2226.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.~~

~~2226.7 The school employs a sufficient number of professional staff for the population served.~~

~~2226.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.~~

~~2226.9 The school maintains a register of the daily attendance of each of its enrollment.~~

~~2226.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving~~

~~the same grades.~~

~~2226.11 The school has the financial capacity to carry out its educational purposes for the period of approval.~~

2226 Approval of Tutorial Programs

~~2226.1 "Tutorial program" means education provided to a student who is placed in a short term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166 and these rules. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.~~

2226.2 Approval

~~An approved tutorial program and/or a first time tutorial program applicant shall be subject to the following approval process:~~

~~(a) a tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary.~~

~~(b) This process and application will address both academic program quality and oversight, as well as special education programming, to ensure that students in specialized environments continue to have access to high quality, academically challenging and supportive learning environments. The Secretary, in his/her discretion, may employ an independent evaluator or require accreditation by an accrediting entity recognized by the State Board at Rule 7320 to conduct or replace the academic review.~~

~~(c) In addition, the form prescribed by the Secretary shall, pursuant to Rule 2220, require a tutorial program to provide assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term.~~

~~(d) An approved tutorial program shall comply with all other state and federal laws applicable to Vermont public schools including, without limitation, providing a learning and/or residential environment for students that is safe and healthy, unless otherwise specifically provided by law.~~

~~(e) The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.~~

2226.3 Special Education Approval of Tutorial Programs

~~In order to obtain approval, a tutorial program shall meet the special education standards that apply to approved independent schools as set forth in these Rules.~~

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2226.4 Rate Approval for Tutorial Programs

(a) Each tutorial program shall annually submit its proposed rates for tuition, related services and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program proposed to charge for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, including, without limitation, those set forth in the *Handbook for Financial Accounting for Vermont School Systems*.

(c) The Secretary shall review each tutorial program's annual rate request. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the Secretary will pay to the tutorial program for those services

(d) The Secretary's determination shall be final.

2226.5 Preservation and Maintenance of Student Records by Tutorial Programs

Approved tutorial programs shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

2226.6 Renewal of Tutorial Programs

Not less than 180 days prior to the expiration of tutorial program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the tutorial program not later than 120 days prior to the expiration of the current approval cycle. The applicant tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

2226.7 Denial, Revocation or Suspension of Approval of Tutorial Programs

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board.

Section 2227 Length of Approval:

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

2227 Preservation of Student Records

Approved independent schools are required to maintain their student academic records in a form prescribed by the State Board of Education. The Secretary is authorized to insure that the student academic records are in appropriate form. An approved independent school is required to inform the Secretary in the event it intends to close, at least ninety (90) days prior to any permanent closure, and to surrender its student academic records to a repository designated by the State Board for storage. The repository is authorized to make verified copies available to students and former students.

2227.1 Maintenance of Academic Records

Each approved independent school 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 independent school discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

Section 2228 Special Education Approval of Independent Schools:

2228.1

~~(1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it shall obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.~~

~~(2) Limitation of Special Education Approval.~~

~~Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.~~

~~(3) Out of State Programs:~~

~~Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it 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.~~

~~2228.2 (1) Placement Prohibition:~~

~~No responsible agency, as defined by Rule 2360.3, shall make a special education placement in an independent school that has not been approved for special education purposes nor shall such a placement be made in an independent school that serves special education children who are in a category of disability different from that under which the child was determined to be eligible for special education unless the placement is pursuant to:~~

~~(a) Subsection (2) of this rule;~~

~~(b) A court order, or~~

~~(c) A hearing officer order.~~

~~(2) Exceptional Circumstances – Approval Process~~

~~Upon application by a responsible LEA, the Commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Notwithstanding Rule 2366.2.2(7), in instances in which the Commissioner 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 Commissioner's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.~~

~~(a) Exceptional circumstances exist when:~~

~~(i) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve children with the category of disability under which the child was determined to be eligible for special education; and~~

~~(ii) The proposed placement is deemed appropriate by the child's IEP team.~~

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

~~2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:~~

~~(1) Admissions;~~

~~(2) Least restrictive environment;~~

~~(3) Discipline;~~

~~(4) Graduation;~~

~~(5) Faculty qualifications; and~~

~~(6) Faculty-child ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly placed children on IEPs;~~

~~2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies, and other service providers serving a child by:~~

~~(1) Maintaining educational records and disclosing them to the sending responsible agency and the child's parents;~~

~~(2) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;~~

~~(3) Implementing IEPs; and~~

~~(4) Providing prior notice to the sending LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.~~

~~These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.~~

~~2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.~~

~~2228.4 Written Agreements Required~~

~~2228.4.1 Agreement as to Costs~~

~~In order to obtain special education approval, an independent school shall assure the State~~

~~Board of Education that prior to enrolling a publicly placed child who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines 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 Commissioner, in accordance with 16 V.S.A. §2948, the agreement shall be with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the child's enrollment.~~

~~2228.4.2 Agreement as to Non-Instructional Services~~

~~In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly placed child who is served pursuant to an IEP, it will enter into written agreement with the sending 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 Commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the child.~~

~~2228.5 Special Education Approval Procedures~~

~~(1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education may at any time submit an application for special education approval to the Commissioner.~~

~~(2) Application for special education approval shall be submitted in writing to the Commissioner in accordance with the format prescribed by the Commissioner.~~

~~(3) The procedures for special education approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.~~

~~2228.6 After receiving approval for special education purposes, an independent school shall notify the Commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The Commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Commissioner may return to the State Board for a change in the school's approval for special education purposes. If the Commissioner petitions the State Board for a change to an independent school's approval for special education purposes, the~~

~~Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.~~

~~2228.7 Independent schools that are approved for special education purposes 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 Rule 2228.4.~~

~~2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes~~

~~(1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Commissioner on a form prescribed for that purpose.~~

~~(2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly placed special education children. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.~~

~~(3) The Commissioner shall review each special education approved independent school's annual rate report. If the Commissioner concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly placed special education children, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the Commissioner, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.~~

~~(a) Upon such referral by the Commissioner, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.~~

~~(b) The State Board's determination shall be final.~~

~~(4) Time lines for rate approvals from the Department~~

~~(a) To have a new rate approved for the ensuing school year, an independent school shall~~

~~submit a request for rate approval with supporting documentation to the Department prior to November 15. The Commissioner shall notify the independent school of the results of the review on or before January 15.~~

~~(b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.~~

~~2228.9 Standards and Regulations~~

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

~~Section 2229 Corrections Education Program.~~

~~To the extent applicable, the Commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8, as if it were an independent school.~~

~~2228 Transition Provisions~~

~~(a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.~~

~~(b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.~~

~~(c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.~~

~~(d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.~~

~~(e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2222.1(a)(iii).~~

~~(f) On or before July 1, 2018, all approved independent schools must meet all the requirements of Rule 2223.~~

~~(g) Rule 2228 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.~~

~~Section 2230 Approval of Tutorial Programs~~

~~Statutory authority 16 V.S.A. 828~~

~~2230.1 "Tutorial program" means education provided to a pupil who is placed in a short-term program that is not administered by a LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. §166. The average length of stay for children in a tutorial program shall be not more than six months. The Commissioner may waive the average length of stay time period for individual programs, based upon needs of the children served by the program~~

~~2230.2 Procedures for Approval~~

~~2230.2.1 Application shall include the following:~~

- ~~(a) Name, address, telephone number of the tutorial program,~~
- ~~(b) Name of the Chief Executive Officer or contact person,~~
- ~~(c) A statement of the tutorial program's purpose and objectives,~~
- ~~(d) A description of the tutorial program enrollment including a statement of who it is designed to serve,~~
- ~~(e) A description of the plan of organization for the tutorial program and~~
- ~~(f) A tutorial program calendar.~~

~~2230.2.2 Review~~

~~Upon receipt of an application for approval, the Commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.~~

~~2230.2.3 Report to the Commissioner~~

~~The appointed committee shall present a written recommendation regarding possible approval to the Commissioner. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Commissioner to the State Board of Education.~~

~~2230.2.4 Board Action~~

~~The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the tutorial program shall be notified of this meeting date.~~

~~2230.2.5 Term of Approval~~

~~The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.~~

~~2230.2.6 Renewal~~

~~Not less than three months prior to expiration of a tutorial program's approval, the Commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.~~

~~2230.2.7 Denial, Revocation or Suspension of Approval~~

~~Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Commissioner shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.~~

~~2230.2.8 Standards and Regulations~~

~~The Vermont State Board of Education shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.~~

~~2230.3 Criteria for Approval~~

~~In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:~~

~~2230.3.1 The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in Rule 2230.3.10, below.~~

~~2230.3.2 The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.~~

~~2230.3.3 The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of children.~~

~~2230.3.4 The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.~~

~~2230.3.5 Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.~~

~~2230.3.6 All professional staff has relevant experience and/or training in the duties to which they are assigned.~~

~~2230.3.7 The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible LEA.~~

~~2230.3.8 The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.~~

~~2230.3.9 The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.~~

~~2230.3.10 The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school and coordinates with other responsible agencies such as Department of Children and Families, Community Mental Health Centers, and Family-Parent-Child-Centers by:~~

~~2230.3.10.1 Contacting the responsible LEA (s) (see 16 V.S.A. §1075) in order to access school records and determine the special education status of the child;~~

~~2230.3.10.2 Reviewing the IEP, the child's needs and its own ability to implement the IEP;~~

~~2230.3.10.3 Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, he/she is suspected of having a disability;~~

~~2230.3.10.4 Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;~~

~~2230.3.10.5 Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;~~

~~2230.3.10.6 Implementing IEPs; and~~

~~2230.3.10.7 Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.~~

~~2230.3.11 In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:~~

~~(1) Admissions;~~

~~(2) Discipline; and~~

~~(3) Significant change in placement.~~

~~2230.4 Rate Approval for Tutorial Programs~~

~~2230.4.1 Each tutorial program shall annually report its rates for tuition, related services and room and board, if applicable, to the Commissioner on a form prescribed for that purpose.~~

~~2230.4.2 The rates that a tutorial program charges for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.~~

~~2230.4.3 The Commissioner shall review each tutorial program's annual rate report. If the Commissioner concludes that a tutorial program's rates are not reasonably related to the services provided, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the~~

~~explanation is not satisfactory, the Commissioner shall refer the matter to the State Board of Education.~~

~~2230.4.3.1 Upon such referral by the Commissioner, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.~~

~~2230.4.3.2 The State Board of Education's determination shall be final.~~

~~Section 2231-2230~~ Approval/Recognition of Distance Learning Schools,

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~~Section 2232~~ Statutory Authority:-

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16 V.S.A. Section 166 (b)-(6).

~~Section 2233-2231~~ Definition.

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A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the state board for approved independent schools.

~~Section 2234-2232~~ Procedures and Standards.

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The distance learning school shall meet the procedures and standards set forth in the rules ~~2220-2227, above~~ applicable to approved independent schools, which because of its structure can be applied, and the following rules:

~~(a)~~ Pursuant to 16 V.S.A. § 166(b)(6), a distance learning school approved under these rules shall not be eligible to receive tuition payments from public school districts.

~~(b)~~ 2234.1 The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.

~~(c)~~ 2234.2 The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.

~~(d)~~ The distance learning school maintains tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment;

(e) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

(f) In the event that the school closes, the distance learning school has policies for tuition adjustment or refund.

2232.1 Preservation and Maintenance of Student Records by Distance Learning Schools
Distance Learning Schools shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

~~2234.3 The distance learning school offers an educational program which is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.~~

~~2234.4 The distance learning school has policies and procedures to:~~

~~(1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program, and,~~

~~(2) Measure student progress to ensure that students continue to benefit from such instruction.~~

~~2234.5 The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.~~

~~2234.6 The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.~~

~~2234.7 Tuition:~~

~~2234.7.1 Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment.~~

~~2234.7.2 The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.~~

~~2234.8 In the event that the school closes, the distance learning school has policies for:~~

~~(1) Tuition adjustment or refund, and~~

~~(2) Preservation and release of student records.~~

~~[NOTE: Rules 2240 through 2260 regarding Postsecondary Certification are currently undergoing amendment through Administrative Rulemaking Procedures and not included herein as such rules are not final.]~~

~~Section 2270 Private Kindergarten Approval.~~

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~~Statutory Authority: 16 V.S.A. Section 166(b)~~

~~A private kindergarten program shall comply with the procedures and standards set forth in the rules applicable to approved independent schools, and any other laws or rules of as may be applicable to a private kindergarten program, including any applicable rules of the Department for Children and Families.~~

~~A private kindergarten program may be approved to operate by the State Board, for up to five years, without having received accreditation from an accrediting entity recognized by the State Board at Rule 7320, upon (i) a favorable recommendation from the Secretary,~~

~~(ii) documentation that the program complies with any/all preapproval requirements of the Department for Children and Families,~~

~~(iii) satisfactory assurances and documentation that the program complies with the requirements of 16 V.S.A. § 166(c);~~

~~(iv) satisfactory assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term and also provide a learning environment for students that is safe and healthy;~~

~~(v) comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.~~

2270.1 Renewal

~~Not less than 180 days prior to the expiration of private kindergarten program's approval, the Secretary shall send an application packet and a letter notifying the private kindergarten program that the completed application must be received from the private kindergarten program not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.~~

~~Section 2271 Procedure For Approval:~~

~~2271.1 Application:~~

~~Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Commissioner of Education.~~

~~* An application for approval shall contain the following:~~

~~* Name and address of the school; A description of the school's curriculum and methods of instruction;~~

~~* A description of the school's physical facilities;~~

~~* A list of the school's staff and their qualifications;~~

~~* The operating schedule of the school; and A statement certifying that the school is in compliance with the Kindergarten-Nursery School provisions in the Regulations for Day-Care of the Social and Rehabilitation Services Department. (hereinafter "S.R.S. Kindergarten Regulations").~~

~~2271.2 Appointment of Reviewer:~~

~~Upon receipt of an application for approval, the Commissioner shall appoint an educator to review the application and visit the school. In addition, the commissioner shall contact S.R.S. to determine on his or her behalf whether the school meets the "S.R.S. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public-supported kindergarten.~~

~~2271.3 Review:~~

~~The appointed educator shall review the application and visit the school.~~

~~2271.4 Report to Commissioner:~~

~~The appointed educator shall present a written recommendation regarding approval to the Commissioner. The report of the appointed educator shall incorporate the determination of S.R.S. concerning compliance with the "S.R.S. Kindergarten Regulations". A copy of the recommendation shall be provided at the same time to the applicant.~~

~~2271.5 Board Recommendation~~

~~The commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the kindergarten shall be notified of this meeting date.~~

~~Section 2272 Criteria for Approval:~~

~~The State Board shall approve a private kindergarten if it finds that:~~

~~2272.1 The curriculum embodies a minimum course of study, as defined in 16 V.S.A. Section 906, Courses of Study, with learning experiences adapted to a pupil's age and~~

ability.

~~2272.2 The school is in compliance with state requirements pertaining to the health and safety of pupils adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)~~

~~2272.3 The director and teachers in the kindergarten are qualified through training or experience in:~~

~~—structuring kindergarten learning environments which enhance cognitive and social development;~~

~~—teaching skills and concepts in mathematics, language arts, science, the arts, and health which are consistent with principles of child development;~~

~~—planning and leading activities that foster social and emotional growth in young children;~~

~~—dealing with parents and family of children to ensure home support and to promote learning outside of the school or center; and~~

~~—identifying developmental delays in young children.~~

~~2272.4 The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours which is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).~~

~~2272.5 The facility and program meet the "S.R.S. Kindergarten Regulations."~~

~~Section 2273 Additional Requirements.~~

~~2273.1 Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with state and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.~~

~~2273.2 The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.~~

~~Section 2274 Term of Approval.~~

~~The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.~~

~~Section 2275 Denial, Revocation or Suspension of Approval.~~

~~Prior to recommending denial, revocation or suspension of approval to the State Board, the commissioner shall notify the kindergarten of the reasons for the proposed action and shall~~

~~afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.~~

7320 Recognized Accrediting Agencies

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Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

1) New England Association of Schools and Colleges
Burlington, Massachusetts.

~~—Middle States Association of Colleges and Schools/Commission on Higher Education,
Philadelphia, Pennsylvania.~~

~~—Northwest Association of Schools and Colleges, Seattle, Washington.~~

~~—Southern Association of Colleges and Schools—Commission on Colleges, Atlanta, Georgia.~~

~~—Western Association of Schools and Colleges—Accrediting Commission for Senior Colleges,
Oakland, California.~~

~~—North Central Association of Colleges and Schools, Chicago, Illinois.~~

~~2) Office of Overseas Schools, Department of State, Washington, D.C.~~

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~~3) Any accrediting entity that accredits elementary and secondary schools, that is recognized as an accrediting entity for this purpose, by the United States Department of Education.~~

~~- Department of Education, Northern New England Conference of Seventh-Day Adventists,
Portland, Maine.~~

~~—Diocesan School Board, Burlington, Vermont.~~

~~—National Association of Trade and Technical Schools, Washington, D.C. (for non-degree
granting purposes only).~~

~~7330 Private Schools Designated as Public Schools 16 VSA § 827.~~

2200 Evaluation of Private Education Programs Independent School Program Approval

2210 (reserved).

2220 Approval of Independent Elementary and Secondary Schools

Statement of Purpose, Vermont State Board of Education, November 17, 2015:

Whereas, the State Board rules concerning the “evaluation of private education programs” (2200 series) have not been revised since 2001, and

Whereas, a broad number of changes have occurred in society and in education during that time, and

Whereas, many rules and practices may now be inadequate or antiquated; and

Whereas, Goal One of the State Board’s strategic plan calls for identifying the magnitude and causes of achievement gaps;

And Goal Two of the State Board’s strategic plan calls for a review and updating of State Board rules;

The State Board of Education requests the Secretary of Education to recommend to the State Board revisions to these rules and practices in order to modernize, enhance equity and quality, and make them more efficient. Specifically,

☉Updating antiquated language - The Board requests the Secretary’s recommendations on updating the language and the system, in whole and in part.

☉Fiscal Accountability – The law requires the State Board to assure that each independent school has adequate resources. The Board considers the current rules insufficient to meet this statutory requirement. The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.

☉Equal Opportunity and Equity – Currently, the provisions for assuring equal access and admission to private schools are not sufficient. It is the view of the State Board that equal opportunities must be available to all in admissions, program availability and discipline; and that the rules explicitly address these issues.

◎◎The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The Board requests that independent schools be evaluated periodically using a NEASC system.

◎◎Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The Board realizes that certain schools may specialize in providing services for certain categories of disability and that circumstances will vary.

Definition:

“Approved independent schools” are schools that are eligible to receive public funding, and which as a condition of that approval, meet and maintain certain minimum standards, as set forth in these rules. The State allows use of public dollars for education in private institutions that meet the standards and state purposes defined in the approval rules.

2221 Statutory Authority (includes, without limitation) 16 V.S.A. §164(14), 16 V.S.A., § 166 and 16 V.S.A., § 2958(e).

2222 Application for Approval.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. Any independent school seeking approved status as either an initial or renewal application shall comply with Rule 2223. Not less than 180 days prior to the expiration of an independent school’s approval, the Secretary shall send an application packet and a letter notifying the school that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time.

2222.1 Tuition from Public Funds.

(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless:

(i) the school is approved for special education purposes pursuant to these rules, and through a special education application process developed by the AOE that is consistent with the requirements of the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400), the Special Education Rules of the Vermont State Board of Education at State Board Rule 2360 et seq., and Chapters 99 and 101 of Title 16 of the Vermont Statutes Annotated.

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant

to Rule 7320 of the State Board's rules,

(iii) the school has an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable state or federal law, including, the Vermont Public Accommodations Act (codified at 9 V.S.A. § 4500 et seq.), the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 701 et seq.), and the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400).

(iv) the school complies with all other state and federal laws and rules applicable to Vermont public schools including, without limitation providing a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

(v) the school has adequate financial resources to maintain operations and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule 7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. The Secretary may also recommend, as part of any approval recommendation to the State Board, that budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, that independent auditors be periodically employed by the applicant school, and any/all audit results be made available, in whole, to the Secretary, upon request.

2222.2 Tuition from Public Funds, Out of State Independent Schools

(a) In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accrediting agency recognized by the State Board and substantially comply with the approval standards set forth in these rules.

(b) In order for tuition to be paid to an independent school in another state that is a special purpose school that is substantially similar to Vermont special purpose approved school, the out of state special purpose school shall substantially comply with the approval standards set forth in Rule 2224.1 and Rule 2224.2 of these rules.

2222.3 Length of Approval

The Board may grant initial approval and renewal of approval for not more than five years. The approval term must track, and cannot exceed, a current period of accreditation status by an accrediting entity recognized by the State Board at Rule 7320.

2222.4 Extension

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

2222.5 Termination

Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

2222.6 Investigations

Reports or complaints to the Secretary concerning matters related to an approved independent school's adherence to approval standards as set forth in these rules shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the Secretary, including a member of the Council of Independent Schools. The review team shall promptly investigate the allegations, and report its findings, and any recommendation(s) to the Secretary, within forty-five (45) days. The Secretary, after receiving the report and any recommendation(s) of the review team, shall, after consulting with the Council of Independent Schools, make a recommendation to the State Board at its next scheduled meeting, or as soon as practicable, about the continued approval status of the school.

2222.7 Denial, Revocation or Suspension of Approval

If the Secretary, after consulting with the Council of Independent Schools, determines that denial, revocation or suspension of approval is warranted, he or she shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the State Board. Approval of an independent school shall be revoked or suspended by the State Board based on a finding that the school no longer meets the criteria for approval as set forth in these rules, including without limitation, (i) Rule 2222.1 and (ii) that the school has failed to adequately provide a learning and (as applicable) residential environment for students that is safe and healthy.

2223 Special Education Approval of General Education Independent Schools

In order for an independent school to receive approval for purposes of these rules, it must offer services to students with disabilities in each special education category of disability as defined in by the Special Education Rules of the State Board of Education at Rule 2360 et seq.

2223.1 Out-of-state Programs

Unless otherwise determined by the State Board of Education, in order for an out-of-state independent school to receive publicly funded Vermont students, the out-of-state independent school must 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.

2223.2 Special Provisions Applicable to Approved Independent Schools Providing Special Education Services and Local Education Authorities (LEA) Pursuant to the Individuals With Disabilities in Education Act (IDEA) and the Special Education Rules of the State Board of Education

(a) There must be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative.

(b) IEP Teams must identify the personnel to provide IEP services to students. The independent school must verify that the staff identified to provide services has adequate time available to provide services required by the student's IEP. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school.

(c) General education teachers cannot be identified as service providers on IEPs unless they also have a special education endorsement.

(d) Independent school staff must have a copy of the student's current IEP in order to implement the following IDEA requirements:

(i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(ii) Each teacher and provider described in paragraph (d)(i) of this section is informed of--

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) LEA's must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student.

(f) When an IEP Team places a student in an independent school that only serves students with disabilities, IEP Teams, with input from the independent school staff, shall develop a reintegration plan for each student for return to the student's home school. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to the student's home school.

2223.3 Coordination With Responsible Sending Agency

An independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (a) maintaining educational and attendance records and disclosing them to the sending responsible agency and the student's parents;
- (b) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (c) implementing IEPs including documentation of student progress and creating and providing regular progress reports.
- (d) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- (e) these practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2223.4 Educator Licensure Requirements for Special Educators

An independent school shall satisfy the educator licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2223.5 Special Education Rates Charged by Independent Schools; Maximum Rate Set by Secretary

(a) The Secretary or his/her designee shall set a maximum rate that can be charged by receiving independent schools for the provision of special education services. The Secretary shall provide a form(s) that an applicant independent school shall complete which provides the Secretary with sufficient information on the previous year's actual costs of the applicant schools for the provision of special education services, beyond those services provided as part of the general education program and accounted for in the regular education tuition, in order that the Secretary has the necessary information to set a maximum rate for the coming school year.

(b) The maximum rate set by the Secretary is not intended to reflect the actual rate charged by the independent school. The actual amount charged shall be set by agreement between an independent school and sending district. The actual amount charged

- (i) cannot exceed the maximum rates set by the Secretary, and
- (ii) shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students.

(c) An independent school applying for approved status under these rules must assure the State Board that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines actual costs associated with the student's attendance regarding the provision of IEP services.

2223.6 First-Time Applicant for Maximum Rate

An independent school applying for the first time for a maximum rate to be set by the Secretary shall estimate in its application a maximum rate that is as close to projected actual costs as possible, for the coming year, based on relevant factors including, without limitation, anticipated enrollment of students with special needs, nature of services required, and comparative data of other similarly situated independent school applicants for the past two (2) years; the Secretary shall make applications of other similarly situated independent school(s) available for this purpose.

2223.7 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students 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 local educational agency that has educational planning responsibility for the student.

2224 Independent Schools with a Specific State Purpose (e.g. therapeutic and rehabilitative programs)

There are certain approved independent schools and possibly (future) applicant schools that primarily operate solely for the purpose of providing a specific state purpose, such as a dedicated program of unique special education services, therapeutic services or rehabilitative services. These schools may not be suited, due to their specific mission, to serve all students, or serve all categories of disability as defined by the Special Education Rules of the State Board. Notwithstanding any other provision of these rules, Rule 2224.1 and Rule 2224.2 set forth the approval standards for independent schools with a specific state purpose.

2224.1 General Education Review and Approval and Fiscal Review of Independent Schools with a Specific State Purpose

In order to obtain general education approval, and ensure that the school has the resources to remain fiscally solvent during the period of an approval term, the school shall be accredited for academic and fiscal purposes by an accrediting entity recognized by the State Board pursuant to Rule 7320 of the State Board's rules. In addition, the Secretary shall prescribe a form that requires the applicant school to document how it shall prioritize and provide a learning and (as applicable) residential environment for students that is safe and healthy and comply with any other applicable federal and state laws and rules as may be necessary, to the extent such laws or rules are not covered by the review of the accrediting body.

2224.2 Special Education Review and Approval of Independent Schools with a Specific State Purpose

In order to obtain special education approval the school shall meet the special education standards that apply to approved independent schools as set forth in these Rules, but only for the categories of disability served by the school.

2224.3 Rate Approval for Independent Schools Approved for Specific State Purposes

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Agency on or before July 1st of each year. The Secretary shall notify the independent school of the results of the review on or before August 15th of each year.

(b) If a request for a new rate approval is not submitted by July 1st, the most recent approved rate will be in effect until the following July 1st, when the next rate request is due.

2225 Corrections Education Program

To the extent applicable, the Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within these rules, as may be applicable.

2226 Approval of Tutorial Programs

2226.1 "Tutorial program" means education provided to a student who is placed in a short term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166 and these rules. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.

2226.2 Approval

An approved tutorial program and/or a first time tutorial program applicant shall be subject to the following approval process:

(a) a tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary.

(b) This process and application will address both academic program quality and oversight, as well as special education programming, to ensure that students in specialized environments continue to have access to high quality, academically challenging and supportive learning environments. The Secretary, in his/her discretion, may employ an independent evaluator or require accreditation by an accrediting entity recognized by the State Board at Rule 7320 to conduct or replace the academic review.

(c) In addition, the form prescribed by the Secretary shall, pursuant to Rule 2220, require a tutorial program to provide assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term.

(d) An approved tutorial program shall comply with all other state and federal laws applicable to Vermont public schools including, without limitation, providing a learning and/or residential environment for students that is safe and healthy, unless otherwise specifically provided by law.

(e) The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

2226.3 Special Education Approval of Tutorial Programs

In order to obtain approval, a tutorial program shall meet the special education standards that apply to approved independent schools as set forth in these Rules.

2226.4 Rate Approval for Tutorial Programs

(a) Each tutorial program shall annually submit its proposed rates for tuition, related services and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program proposed to charge for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, including, without limitation, those set forth in the *Handbook for Financial Accounting for Vermont School Systems*.

(c) The Secretary shall review each tutorial program's annual rate request. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the Secretary will pay to the tutorial program for those services

(d) The Secretary's determination shall be final.

2226.5 Preservation and Maintenance of Student Records by Tutorial Programs

Approved tutorial programs shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

2226.6 Renewal of Tutorial Programs

Not less than 180 days prior to the expiration of tutorial program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the tutorial program not later than 120 days prior to the expiration of the current approval cycle. The applicant tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be

updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

2226.7 Denial, Revocation or Suspension of Approval of Tutorial Programs

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board.

2227 Preservation of Student Records

Approved independent schools are required to maintain their student academic records in a form prescribed by the State Board of Education. The Secretary is authorized to insure that the student academic records are in appropriate form. An approved independent school is required to inform the Secretary in the event it intends to close, at least ninety (90) days prior to any permanent closure, and to surrender its student academic records to a repository designated by the State Board for storage. The repository is authorized to make verified copies available to students and former students.

2227.1 Maintenance of Academic Records

Each approved independent school 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 independent school discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

2228 Transition Provisions

- (a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.
- (b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.
- (c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.
- (d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.
- (e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2222.1(a)(iii).
- (f) On or before July 1, 2018, all approved independent schools must meet all the requirements of Rule 2223.

(g) Rule 2228 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.

2230 Recognition of Distance Learning Schools,
Statutory Authority: 16 V.S.A. Section 166 (b)(6).

2231 Definition.

A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the state board for approved independent schools.

2232 Procedures and Standards.

The distance learning school shall meet the procedures and standards set forth in the rules applicable to approved independent schools, which because of its structure can be applied, and the following rules:

- (a) Pursuant to 16 V.S.A. § 166(b)(6), a distance learning school approved under these rules shall not be eligible to receive tuition payments from public school districts.
- (b) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (c) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.
- (d) The distance learning school maintains tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment;
- (e) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.
- (f) In the event that the school closes, the distance learning school has policies for tuition adjustment or refund.

2232.1 Preservation and Maintenance of Student Records by Distance Learning Schools
Distance Learning Schools shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

[NOTE: Rules 2240 through 2260 regarding Postsecondary Certification are currently undergoing amendment through Administrative Rulemaking Procedures and not included herein as such rules are not final.]

2270 Private Kindergarten Approval.

Statutory Authority: 16 V.S.A. Section 166(b)

A private kindergarten program shall comply with the procedures and standards set forth in the rules applicable to approved independent schools, and any other laws or rules of as may be applicable to a private kindergarten program, including any applicable rules of the Department for Children and Families.

A private kindergarten program may be approved to operate by the State Board, for up to five years, without having received accreditation from an accrediting entity recognized by the State Board at Rule 7320, upon (i) a favorable recommendation from the Secretary,

(ii) documentation that the program complies with any/all preapproval requirements of the Department for Children and Families,

(iii) satisfactory assurances and documentation that the program complies with the requirements of 16 V.S.A. § 166(c);

(iv) satisfactory assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term and also provide a learning environment for students that is safe and healthy;

(v) comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

2270.1 Renewal

Not less than 180 days prior to the expiration of private kindergarten program's approval, the Secretary shall send an application packet and a letter notifying the private kindergarten program that the completed application must be received from the private kindergarten program not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

7320 Recognized Accrediting Agencies

Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

- 1) New England Association of Schools and Colleges
Burlington, Massachusetts.
- 2) Office of Overseas Schools, Department of State, Washington, D.C.
- 3) Any accrediting entity that accredits elementary and secondary schools, that is recognized as an accrediting entity for this purpose, by the United States Department of Education.

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BURR AND BURTON ACADEMY



OFFICE OF THE HEADMASTER

May 9, 2016

Rebecca Holcombe
Secretary of Education
Vermont Agency of Education
120 State Street, 4th Floor
Montpelier, VT 05602-2501

Dear Secretary Holcombe:

We write this memorandum in response to your request for comment from the Council of Independent Schools regarding the State Board of Education directive to review the rules governing independent school approvals. This letter is organized as follows:

- Overview: the landscape of independent schools
- SBE Questions and CIS Feedback
- Conclusion

We look forward to reviewing this memorandum with you.

Overview: the landscape of independent schools

Vermont has a rich tradition of supporting students and communities through a combination of independent schools and public schools. For certain communities, independent schools educate virtually all students, while in other locales, the public schools meet that need, at times in conjunction with independent schools. Vermont has a history of supporting local control for the schooling of its students, and this philosophy has led to diverse approaches, tailored to the needs of each community.

Indeed, the General Introduction for Independent Schools for the AOE begins with the words, *“The Vermont Legislature and the Vermont State Board of Education have consistently encouraged the development of strong independent schools.”* The final paragraph of the introduction concludes, *“At present there are a number of independent schools that reflect the variety of needs and educational philosophies that exist in the state. It is through this unique network that special needs and educational alternatives are able to flourish. The Vermont State Board of Education views these schools as an important element of our educational system offering learning opportunities to students in Vermont.”*

The independent school landscape is diverse. The overwhelming number of independent schools in the state are small – less than 100 students, with many being less than 50 students. Independent schools come in all shapes and colors. Many specialize in serving the unique needs of a particular group (for example, students with particular learning differences; emotionally challenged students; students skilled in skiing and snowboarding). Some schools focus on a pedagogical approach – for example, progressive or constructivist schools,

Montessori schools, Waldorf schools, or farm schools. Some schools, including the largest independent schools in the state, focus on serving entire communities and educate the vast majority of students across the full spectrum of needs.

Within this diversity, what these schools have in common is a mission-based approach, a commitment to serving a student population consistent with their mission, the flexibility to manage their educational approach to best serve their students, governance and fiduciary oversight driven by a board of trustees, and accountability directly to the students and families that they serve.

SBE Questions and CIS Feedback

The State Board of Education provided the Agency of Education with a directive to review the approval process for independent schools. In your memorandum, you charged us as co-chairs of the Council of Independent Schools to seek input and perspective from the CIS membership on each of the issues outlined below:

- Antiquated Language
- Fiscal Accountability
- Equal Opportunity and Equity
- External Evaluation
- Special Education

On March 28, we held a CIS meeting at the Agency of Education solely and specifically to review these issues. Here are our findings:

Antiquated Language: Language should be understandable. The membership fully supports updating language if it increases clarity regarding the intent of any specific rule.

Fiscal Accountability: The issue in the SBE memorandum that garnered the most attention was the notion that independent schools need to show "assurance of adequate resources." The reaction among CIS members was one of confusion: what is the intent regarding any fiscal review? Are there specific financial benchmarks that are appropriate to each and every school, regardless of size or length of existence? What does "adequate resources" mean – in other words, is this an assessment of whether the school has the financial wherewithal to complete the school year, or is the intent to delve into the financial details of school operations to make a judgment about how resources are utilized? Is the SBE suggesting that debt of a certain size or a deficit of a certain size would result in loss of approved status? What would be the process for corrective action if a school was deemed to have "inadequate" resources?

Many independent schools operate on a shoestring, especially the smaller ones, and the cost of an independent audit is daunting. For others, especially those that already undergo NEASC accreditation, the accreditation process includes a rigorous financial review.

The notion that every school should submit its budget in some predetermined format, without any knowledge of what that format would be, how the data would be assessed, and for what purpose struck the membership as a one-size-fits-all approach that met with great resistance.

The group was clear regarding one specific issue: line item budget decisions need to be made by each school, and fiduciary responsibility rests with each board of trustees. Every single

school expressed a deep commitment to serving students under its mission, and it is our boards of trustees that are charged with determining whether resources are allocated appropriately.

The bottom line is that we recognize the desire to assure that each school has the financial strength to fulfill its commitment to students and families. NEASC review provides this assurance. A periodic audit could provide this assurance. However, financial assurance under this definition is limited strictly to an assurance of solvency. Any financial oversight and decision making beyond determining solvency rests with our respective boards of trustees.

Equal Opportunity and Equity: This item generated a great deal of discussion with a very clear perspective: each independent school is different, unique, and mission driven. To apply a one-size-fits-all approach under the guise of “equal opportunity and equity” would be destructive to the independent school landscape. We already operate under anti-discrimination laws; this directive seems to seek to go beyond the law.

During the discussion, we went around the room and every single participant discussed the mission of his or her school, and explained how students were able to attend. There is a myth that Vermont’s independent schools are somehow “elitist,” and that myth was shattered as we heard from independent schools doing important work with a diverse range of students at the center of every decision.

The CIS recognizes the need for every student in Vermont to have access to educational opportunity. However, equal access does not mean that every single student must be able to attend every single school. This would be a gross injustice to the students themselves as it would lead to the dilution in effectiveness of so many schools. Students with extraordinary needs deserve to access education suited to those needs, and many independent schools do just that, whether those needs are emotional, physical, athletic, psychological/therapeutic, or academic. Not every public school is able to successfully fulfill the needs of every single child, and independent schools cannot accomplish this either. Independent schools do, however offer a wide range of opportunities for Vermont schoolchildren and have done so for many decades. They form an integral part of Vermont’s educational landscape. One specific comment in the CIS discussion captured this sentiment well: *the same for all does not mean the best for all.*

The CIS is committed to equity of opportunity, and Vermont’s system of school choice ensures that the opportunity to find the right school for one’s child is not limited to the wealthy. Every child, not just the most wealthy or the most educationally needy, should be able to attend the school that is best for him or her.

Ultimately, the CIS asks that the SBE recognize, and the rules reflect, that Vermont’s students and families are better off having the range of options and opportunities fostered by the existing combination of public and independent schools as a whole, while also recognizing that forcing independent schools to serve every single student would be destructive to the overall network of independent schools while decreasing the effectiveness of individual schools.

This issue was viewed as extremely important as it gets to the core of each school's ability to meet its mission.

External Evaluation: The membership was confused by this item. Many believed it was already being done by the Agency of Education and NEASC accreditation. We support external evaluation as a way to ensure that schools reflect on their performance in serving students according to their mission, and a strong system is already in place.

Special Education: This item was viewed similarly to the “equal access” item: it would be destructive to impose a requirement that independent schools serve every single student, regardless of learning or emotional needs. It is unrealistic to think that this could be done well, and it would impose a one-size-fits-all approach on an independent school landscape that exhibits educational diversity. That diversity should be viewed as a strength, not as something to be challenged.

Within the landscape of independent schools, there are many that serve students with special needs, some exclusively so. A number of Vermont’s independent schools provide services that our public schools cannot. However, many of these schools specialize in a specific need. Would this require them to serve students outside of their clearly stated mission? Would a small Montessori school be required to be approved in all special-education categories?

The CIS position is that this requirement would be counterproductive to the landscape of independent schools; we are strongly opposed to this approach.

Conclusion

One cannot sit in a room with dedicated leaders of independent schools throughout the state without being struck by the commitment that each individual and each school has to serving its students well. The independent school landscape enhances educational opportunities for young people in Vermont, and any revisions to the current rules should protect this unique system, ensuring as well the opportunity for new independent schools to form in the future as our student population continues to evolve.

It is through this unique network that special needs and educational alternatives are able to flourish.

We are deeply concerned that the SBE rules review could undermine this unique network, reduce choices available to families, and undermine the long tradition of local control regarding educational matters. Doing so would be a huge loss for the students, families and communities of Vermont. We ask for your support.

Respectfully submitted,



Mark H. Tashjian, Headmaster
Burr and Burton Academy
Co-Chair
Council of Independent Schools



Michael Livingston, Head of School
The Sharon Academy
Co-Chair
Council of Independent Schools



Vermont Independent
Schools Association

May 10, 2016

Rebecca Holcombe, Secretary
Vermont Agency of Education
via email, and in-person delivery

Dear Secretary Holcombe:

The Vermont State Board of Education (SBE) has initiated a review of the 2200-series of its rules covering independent elementary and secondary schools. Within that resolution the SBE provided guidance to you on five topics, four of which would make substantive changes to the rules.

The Vermont Independent Schools Association (VISA), an advocacy organization representing the entire community of Vermont elementary and secondary independent schools, has reviewed the SBE proposals, and submits the accompanying document which reviews each proposal in detail. Additionally we have supplied a comparison of the accredited vs. approved, two informational files concerning independent school enrollments and special education services and a summary list of NEASC accreditation criteria.

The tenor of the relationship between the independent schools community and the executive branch of Vermont state government has been on an encouraging upward trend since you took office. We commend you for your attention to independent school issues and for the constructive tone you have brought to the relationship. We very much wish those positive values to continue.

The SBE rules proposals illustrate what seems to us a misunderstanding of independent education and independent schools. The VISA and Council of Independent Schools submissions explain why the proposals are unacceptable in their current form.

We believe a dialogue in which you and your team engage with our groups to find constructive responses to the SBE's needs has reasonable potential for success.

Sincerely yours,

Mill Moore, Executive Director

Attachments: Enrollment comparisons, Special ed approvals list, NEASC standards

INDEPENDENT SCHOOLS APPROVED FOR SPECIAL EDUCATION 8/18/15

Independent Schools	INDEPENDENT SCHOOLS APPROVED FOR SPECIAL EDUCATION 8/18/15												
	intellectual disability	specific learning disability	visual impairment	hearing loss	speech/ language impairment	orthopedic impairment	other health impairment	emotional disturbance	autism spectrum disorder	deaf-blindness	multiple disabilities	traumatic brain injury	development delay
Arlington School (The) was Caledonia Sch	X	X					X	X					
Baird Center	X	X			X		X	X	X				
bellcate School	X	X			X		X	X	X			X	
Bennington School	X	X		X	X		X	X			X		
Brookhaven Learning Center	X	X			X		X	X					
Burr & Burton Academy	X	X	X	X	X	X	X	X	X	X	X	X	
Centerpoint	(mild)	X					X	X					
Ch.O.I.C.E. Academy	X	X					X	X					
Community Schoolhouse		X					X	X					
Compass School		X					X		X				
Connecticut River Academy		X					X	X					
Cornerstone School	X	X					X	X					
East Meadow School		X					X	X	X				X
East Valley Academy		X					X	X					
Fay Honey Knopp	X	X			X		X	X	X				
Foundations	X				X		X		X		X	X	X
Greenwood School		X					X						
INSPIRE									X				
Jean Garvin School (The)	(mild)	X			X		X	X	X				
Job's Mountain Academy	X	X						X	X			X	
Kindle Farms Children Service	X	X					X	X	X				
Laraway School	X	X	X		X	X	X	X	X		X	X	
LEARN	X	X					X	X	X				
LiHigh School	X	X					X	X	X		X	X	
Long Trail School		X			X		X		X				
Lyndon Institute	X	X	X	X	X	X	X	X	X	X	X	X	
Manchester Village School	X	X			X		X	X	X				
Maple Street School		X					X						
Maplehill Community School		X					X	X					
Meadows School	X	X					X	X					
Mosaic Learning Ctr. (ALMC)	X	X	X	X	X	X	X	X	X		X	X	
Mountain School at Winhall (The)	X	X	X	X	X	X	X	X	X	X	X	X	
New School (The)	X	X			X		X	X	X		X	X	
St. Johnsbury Academy	X	X	X	X	X	X	X	X	X	X	X	X	
Sharon Academy (The)		X					X						
Sheldon Academy (VAC)	X	X			X		X	X	X				
Soar Learning Center	X	X			X		X	X	X				
Thetford Academy	X	X	X	X	X	X	X	X	X	X	X	X	
Turning Points School		X					X	X					
Village School of No. Bennington	X	X	X	X	X	X	X	X	X	X	X	X	X

Highlighted schools are general education schools. All others are special ed-only.

Source: Agency of Education



COMMISSION ON INDEPENDENT SCHOOLS

Standards for Accreditation

- Standard 1 (Mission):** There is congruence between the school's stated mission and core values and its actual program, policies, planning, and decision-making at both the operational and governance levels.
- Standard 2 (Governance):** The school has an appropriate system of governance that assures that the school remains true to its mission and that it has the necessary resources to support its present and prospective operations.
- Standard 3 (Enrollment):** The admissions process assures that those students who enroll are appropriate, given the school's mission, and are likely to benefit from their experience at the school.
- Standard 4 (Program):** The school provides a comprehensive program of intellectual, aesthetic, and physical activities that is appropriate to support the school's mission and core values, and is consistent with the needs of the range of students admitted. Program planning is informed by relevant research regarding how students learn and the knowledge and capacities they will need to lead purposeful and constructive lives.
- Standard 5 (Experience of the Students):** The school actively considers individual students and has developed plans, policies, programs, and pedagogy to nurture, support, and encourage all students to reach their potential and to participate in the life of the school.
- Standard 6 (Resources to Support the Program):** Given the school's mission, there are adequate resources (space, equipment, technology, materials, and community) to support the school's program.
- Standard 7 (Early Childhood Program):** The early childhood program meets the social, intellectual, and developmental needs of its students by providing appropriate programs, adequate staffing, and sufficient resources and facilities.
- Standard 8 (Residential Program and/or Homestay Program):** The residential program and/or homestay program provide for an intentional curriculum, appropriate facilities, engaging activities, and adequate supervision to meet the needs of each student.
- Standard 9 (Faculty):** There is a sufficient number of appropriately qualified faculty to carry out the mission of the school and the school follows a comprehensive and defined program of professional development that supports continued enhancement of teachers' skills.
- Standard 10 (Administration):** The administration provides leadership and maintains a structure to facilitate the effective functioning of the school, including the participation of faculty in decision-making.
- Standard 11 (Evaluation and Assessment):** The school engages in forms of programmatic assessment consistent with fulfilling its mission and core values. This data is used to inform decision-making and planning.
- Standard 12 (Health and Safety):** The school is a safe and healthy place for students and faculty.
- Standard 13 (Communication):** The school maintains effective systems of external and internal communication and record keeping that inform all constituents and facilitate participation where appropriate.
- Standard 14 (Infrastructure):** There are adequate resources (personnel, finances, facilities, equipment, and materials) to provide for the overall institutional needs of the school.
- Standard 15 (The Accreditation Process):** The school is fully committed to institutional improvement and to the process of accreditation. The school completed an inclusive self-study, conducted in a spirit of full disclosure and following Association guidelines; responds to Commission recommendations and the requirement to meet all standards; and participates fully in the peer review process, hosting a visiting committee and sending personnel to serve on visiting committees to other institutions.

VISA Responses to State Board of Education Rule Proposals

May 10, 2016



Vermont Independent
Schools Association

SBE Proposal: Fiscal Accountability

“The law requires the state board to assure that each school has adequate resources. The board considers that current rules are insufficient to meet this statutory requirement. The board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed and that independent auditors be periodically employed.”

VISA Response: Existing System Works Well. SBE Proposal is Excessive.

The reason the SBE must assure that schools have adequate resources is explicitly stated in 16 V.S.A. § 166 (b): “to meet [a school's] stated objectives.” From our perspective, the AOE's recently adopted standards for independent school financial resource review appear to be working well.

No independent school has closed unexpectedly due to financial problems in a very long time, if ever. The recent Austine School closure was not unexpected; the school had made its problems known to the state repeatedly. The sudden failure of the Vermont Center for the Deaf & Hard of Hearing was a surprise and concern about Burlington College's finances is reasonable. However, neither of these are independent schools subject to the 2200-Series rules now under review. Sudden or unexpected failure has not been a problem among independent schools.

The proposed remedy—annual submission of financial data and budgets in a common statewide format—goes beyond any reasonable need to assure that a school is capable of meeting its stated objectives. Also, common statewide electronic format reporting will be difficult to achieve in any circumstance and the agency may not have the resources needed to set up a system or monitor responses.

As independent schools are non-profit organizations, usually organized under IRS rule 501 (c) (3), their annual Form 990 financial reports to the U.S. government are public documents and are available online at no cost. The filings are quite detailed and may be entirely sufficient to assure the SBE of a school's ability to meet its stated objectives. Perhaps if schools routinely file their Form 990s with the AOE, the SBE will be more comfortable with financial matters.

SBE Proposal: Equal Opportunity & Equity

“Currently, the provisions for assuring equal access and admission to private schools are not sufficient. It is the view of the state board that equal opportunities must be available to all in admissions, program availability and discipline; and that the rules explicitly address these issues.”

VISA Response: Different Standards Necessarily Must Apply for Independents

All Vermont independent schools are prohibited by federal and state law from discriminating on the basis of protected classes and are covered by the Vermont Public Accommodations Act (9 V.S.A. § 4502), which parallels Title III of the Americans with Disabilities Act.

Unlike the public schools, which are public institutions with a mission to provide comprehensive educational programs open to all within their districts, independent schools are non-profit non-governmental organizations with different, often narrower missions.

The NEASC independent school accreditation Standard 3 requires independent schools to have enrollment policies and practices that ensure *“that those students who enroll are appropriate, given the school’s mission, and are likely to benefit from their experience at the school.”* Independent schools welcome and actively encourage a diversity of students whose values and needs align with the schools’ missions.

Conversely, a school compelled to enroll students who do not fit the school’s mission would see its mission performance undermined because it would have to focus outside of its principal intended services.

No Vermont approved independent school uses an admissions test. Schools do occasionally choose not to enroll a student, almost always because the student needs specialized services not available at the independent school. This is no different than public school finding it cannot meet the needs of a student with extreme disabilities or behavioral problems.

The Vermont independent schools that operate with a mission to educate students whose needs or learning styles have not been well served in a local public school should not be compelled to modify their programs to accommodate academically strong students. Schools such as LEARN in Lyndonville and Compass School in Westminster fit this model.

Vermont has seven winter sports academies, several of which have gained world-class recognition for their success in training and educating students. These schools should not be compelled to enroll a student who cannot meet their physical strength and ability standards or who is without interest in the school's non-academic program.

Kindle Farm School in Newfane and Laraway School in Johnson are among the independent schools that serve only students with specific disabilities. These and their peers should not be required to enroll students with different disabilities, or no disabilities. And, schools such as

Thaddeus Stevens School in Lyndon and Maple Street School in Manchester, that voluntarily accommodate a disabled students without need for formal special education services should be recognized and praised for their commitment and success.

A school that follows an educational philosophy not available in Vermont’s public schools (*e.g.*, Waldorf, Montessori, Coalition for Essential Schools) should not be required to enroll students whose needs or interests may not fit that philosophy. Vermont has several very successful Waldorf schools including Lake Champlain Waldorf which now enrolls 250 students and Orchard Valley Waldorf School in East Montpelier which enrolls 170 (both very large by Vermont independent school standards).

SBE Proposal: Use of External Evaluators

“The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The board requests that independent schools be evaluated periodically using a NEASC system.”

VISA Response: VISA Supports NEASC Evaluation.

VISA endorses the NEASC accreditation process as highly beneficial to schools. Thirty-seven of Vermont's 63 approved independent schools, enrolling 72% of all approved independent school students, have NEASC accreditations earned through a rigorous self-study and third-party review process.

However, the cost of NEASC membership and accreditation frequently is impractical for small schools. The approved independents without NESAC accreditation are small. Their median enrollment is 26, compared to a median of 114 for the accredited schools.

VISA currently is working with NEASC to develop a financial accreditation system that would address these schools’ needs while satisfying the AOE's requirements.

SBE Proposal: Special Education

“Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The board realizes that certain schools may specialize in providing services for certain handicapping conditions, and that circumstances will vary.”

VISA Response: Clarification Needed on Rule Intent. Rule Could Be Constructive.

If this proposal means adding a rule that independent schools must provide special education services as state-approved special education providers, then it is not reasonable. However, if the proposal means that schools currently providing services to special education-eligible students without billing for the added service would be recognized for their work, then it is a substantial step forward that VISA will readily endorse.

Federal law places the entire responsibility for educating disabled students on students' home LEAs. Because of this, independent schools are treated very differently in statutes, particularly if a school has not sought state approval to bill for providing special education services.

Some Vermont independents now successfully accommodate special education-eligible students without need for special education-certified teachers or for billing for added services. This accommodation usually is a result of a school's capacity to provide greater individualized attention to students and of the skills of a school's faculty and administrators. The schools that perform these services have gone without recognition. A rule that promotes such recognition would be very worthwhile.

On the other hand, a rule requiring independent schools to be state-approved to provide new services would impose an unfunded mandate. Schools without adequate physical spaces would need to build new facilities. The current AOE/SBE process by which independent schools seek special education approval is challenging and costly, particularly for schools first entering the process. Also, smaller independents might find dealing with the bureaucratic and occasionally litigious nature of special education to be more than they reasonably can bear.

Adding new special education capacity in an era of declining school enrollments may be counter-productive statewide. Availability of qualified special education instructors to staff expanded programs is questionable.

Proposed Rule Change:

SBE Rule 2226 opens with the statement: "The Board may approve an independent school if it finds that: ..."

VISA proposes that the word "may" be replaced by the word "shall." This change will make Rule 2226 consistent with the wording in the first sentence of 16 V.S.A. 166 (b) which begins: "On application, the Board **shall** approve an independent school ..." [*emphasis added*].

Conclusion: Independent Schools Are a Positive Resource.

The success of independent schools fundamentally is tied to their ability to be different and to provide opportunities to Vermont students to experience services and educational philosophies unlike those of the public education system. Schools such as St. Johnsbury Academy, Green Mountain Valley School, Rice Memorial High School, the Vermont School for Girls, Putney School, Hilltop Montessori School, Kurn Hattin Homes, Thaddeus Stevens School and

Greenwood School are examples of the range of services and diverse educational philosophies available in the Vermont independent schools community that are unavailable anywhere in the Vermont public system.

Commenting on the benefits of diverse opportunities, the head of a Vermont independent high school that serves struggling low-achieving students recently wrote: *“Beyond special education and other support services, students not successful in a given school take up time for administration and teachers with evaluations, discipline meetings, creation of special plans and programs and other disruptions to what should be a purposeful and focused, high quality educational program. **There is nothing either cost effective or equitable about this for students whose learning style or needs may be incongruent with their local school’s approach, and the struggles it inevitably results in for these children are predictable.**”* [emphasis added]

The Vermont Legislature and the Vermont State Board of Education have consistently encouraged the development of strong independent schools. Indeed, the State Department of Education, State Board, Legislature and many citizens cooperated in 1988-89 in re-writing 16 V.S.A. § 166. These new changes became effective as of July 1, 1990.

— Vermont Independent School Guide, May 2009

The general thrust of the SBE proposals is to make approved independent schools operate more like the public schools and to imply that independent schools have unmet duties to students and the state. This thrust, which runs counter to explicit state policy is counter-productive and is an improper characterization.

We invite the SBE to engage constructively with the independent schools community on these subjects, instead of immediately invoking a new rules process. We ask the SBE to recognize that independent schools are a different kind of educational institution operating in an educational environment substantially different from the public schools. The independent environment is characterized by voluntary student attendance (school choice), flexibility to adapt curriculum and faculty to student and community needs and providing a range of opportunities often unavailable in the public system. The SBE should support and encourage the benefits flowing from that difference.

Finally, the AOE and SBE must decide if more recognized and fewer approved independents are in the public interest. One should not assume all approved independent schools will choose to comply with rules that are financially intrusive, that eliminate control of enrollment policy and require more special education services. Some schools will instead choose to shift from *approved* to *recognized* status. Recognized schools operate with much less SBE or AOE oversight and are not responsive to availability of any public funds.

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VSBA Resolution on Public Funds to Independent Schools

INDEPENDENT SCHOOL FUNDING The VSBA supports limitations to ensure that public funds are used to support only independent schools that are approved to and do provide education services to students with specific learning needs or that provide services to all segments of the student population regardless of their needs.

VERMONT

SCHOOL BOARDS ASSOCIATION

.....

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To: The Vermont State Board of Education
From: Nicole Mace, Executive Director
Date: July 11, 2016
Re: Independent School Approval Standards

Public dollars that support private schools should carry with them the same obligations regarding quality, equity, efficiency, transparency and accountability (the Act 46 goals) that apply to public school districts.

With those goals in mind, the Vermont School Boards Association (VSBA) recommends that the revised State Board of Education (SBE) rules for independent school approval:

- Establish quality standards at least equal to those required in public schools,
- Require open enrollment policies and procedures to guard against discrimination towards any protected class of student,
- Ensure transparency regarding the implementation of these policies and procedures and use of public dollars, and
- Include mechanisms to enforce accountability.

More specifically, the revised rules should state that for an independent school to be eligible to receive public education funds, the school shall:

- Not discriminate or deny enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, gender identity or disability
- Operate with an open admissions policy, meaning that it accepts all publicly-funded students on a space-available basis
- Be approved for special education services in *at least* four categories and arrange for special education services related to *any* disability category if required in an enrolled student's individual education plan
- Administer state assessments and make outcomes data available to the public in the same manner as public schools
- Provide free and reduced lunch to all eligible students
- Employ teachers and administrators that have licenses and endorsements required by professionals working in public schools

Finally, given the state's interest in maintaining a viable system of public schools, the rules should also state that the SBE will not approve a new independent school that was previously the public school for the same grades in the same school district.

Background and Rationale:

Vermont is one of only two states that allow towns lacking an elementary or secondary school to pay tuition for their students to attend another public or private school. A unique feature of Vermont is that students may also take their "town tuition" to a school out of state.

According to data from the Agency of Education, 5,390 Vermont students participated in the town tuitioning program this year, representing close to 7% of total state public school enrollment. Of those 5,390 students, more than half use their voucher to attend a private school or academy. Nationally, voucher participation represents less than 1/2 of 1% of the total school-age population (Center for Public Education, 2015).

This means that the use of tuition vouchers in private schools in Vermont is seven times the national average. This is significant, given the declines in Vermont's student population over the past two decades and the state's policy interest in keeping public schools viable.

Like school voucher programs, town tuitioning provides taxpayer dollars to students that they can use to pay for public or private school. Eligibility in Vermont is open to all students who are residents of a tuition paying town. However, there is no requirement that private schools accepting public tuition dollars admit all students from tuitioning school districts who wish to attend.

The Vermont tuitioning system is an outlier in many respects, most notably in its long history and the ability to carry vouchers across state lines and even national borders. **Vermont also has minimal accountability for student performance for independent schools receiving public dollars, whereas the trend across the country is to establish performance indicators for schools accepting vouchers** (Center for Public Education, 2015).

Independent schools that are the recipients of public dollars under Vermont's tuitioning construct do not have to follow the same requirements as public schools, and often do not serve the same

students that public schools do. Data prepared by the Agency of Education in January of 2016 illustrate that while 40% of students in Vermont public schools are eligible for free and reduced lunch, just 28% of publicly-funded students attending independent schools and 25% of publicly-funded students attending one of the four academies (St. Johnsbury, Burr & Burton, Thetford, and Lyndon Institute) are FRL-eligible.

Most independent schools offer minimal categories of special education, if any, and some require families to contribute to the costs of special education services out-of-pocket. Some independent schools bill the sending school district for the costs of special education services, over and above the amount paid for tuition. Two-thirds of the independent schools with more than 30% publicly-funded students are not approved to provide special education services in all areas – many of these schools are not approved to provide any special education services.

Independent schools are also free to set tuition rates that vary from town to town. While public school districts must offer the same tuition terms to all sending towns, independent schools are exempt from this rule (16 V.S.A. 824). Independent schools' tuition is the average announced tuition of union high schools *except* in towns where the electorate approves a higher tuition amount. In these towns, the higher tuition voted by the electorate pays the full tuition for resident students.

In towns that do not authorize tuition payments over and above the average announced rate, parents are often responsible for paying the difference. In some independent schools the difference can be paid out of school-operated scholarship programs. The extent of this practice and of parent-paid tuition is unknown as independent schools are not required to disclose their financial data.

Other states do not have the same expansive voucher model as Vermont. In states that do allow public dollars to fund private schools, vouchers are typically tailored to serve students that attend a neighborhood school that has been deemed “failing” and who demonstrate financial need. Many of these systems rely on tax credits or scholarships that are funded by revenue from the state’s general fund. Despite the limited scope of these programs, most states have clear standards for private schools before those institutions can receive public education dollars, including nondiscrimination requirements.

Finally, there are a host of legal questions surrounding the current practice of allowing public funds to go to private institutions that do not adhere to the same non-discrimination and accountability standards that apply to public school districts, including whether such a construct violates the Education and Common Benefits Clauses of the Vermont Constitution or the Vermont Public Accommodations Act.

As the Vermont Supreme Court stated almost twenty years ago, “In Vermont, the right to education is so integral to our constitutional form of government and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification.” (*Brigham v. State of Vermont*)

We see no justification for a system that allows private institutions to selectively determine which publicly-funded students they will serve. Therefore, the VSBA strongly urges the State Board of Education to ensure that the independent school approval rules reflect the state’s commitment to educational equity and non-discrimination by expressly prohibiting practices such as selective enrollment policies and by ensuring independent schools are held to the same quality standards as public schools.

Cc: Rebecca Holcombe, Secretary of Education
Gregory Glennon, General Counsel, Agency of Education