

<u>Date</u>	<u>Name</u>	<u>Town or Organization</u>	<u>Written Testimony?</u>	<u>Summary of Requested Rule Change</u>	<u>Considerations for Response</u>	<u>Proposed SBE Response</u>	<u>Status</u>
8/2/2021	William Mathis	Former SBE Member	yes	The AOE does not have enough capacity to monitor independent schools (Rule 2223).			
8/2/2021	William Mathis	Former SBE Member	yes	The minimum course of study is weak (16 V.S.A. 906).			
8/3/2021	William Mathis	Former SBE Member	yes	The enrollment rule is ambiguous, of questionable legality and is wrong (Rule 2223.3 and 2229).			
8/3/2021	William Mathis	Former SBE Member	yes	The CIS should not have a role in the revocation/suspension of approval process (Rule 2222.32).			
8/3/2021	William Mathis	Former SBE Member	yes	The trigger related to review of financial capacity, "lacks financial capacity" is vague.			
8/3/2021	William Mathis	Former SBE Member	yes	The SBE should wait until the US Supreme Court decides the Maine tuition case (2225).			
8/3/2021	William Mathis	Former SBE Member	yes	The rules on providing special education "assurances" is too weak (2229).			
8/3/2021	William Mathis	Former SBE Member	yes	The rule on out of district placement seems redundant and may conflict with federal and state law.			
8/3/2021	William Mathis	Former SBE Member	yes	The rules should respond to the findings of the Auditor's report of July 2021.			
8/26/2021	Lisa Purcell	Chittenden	no	Has two questions as someone living in a school choice town. Does not see any mention of independent schools needed to abide by equal employment opportunity commission for nondiscrimination.			
8/26/2021	Lisa Purcell	Chittenden	no	The other piece is how is public being notified about these hearings as well as other issues under consideration by SBE. Also noted that today's website indicates that an SBE meeting was cancelled. This could have been confusing to individuals who would have attended today.			
11/3/2021	Lisa Purcell	Chittenden	yes	Anti-discrimination language should be in a more prominent place than in Rule 2225.6 which describes requirements of physical facilities. It should have its own rule number and place within the process of approving schools.			
8/26/2021	Emily Simmons	AOE	yes	Comments regarding compliance with PAA, the state auditor's 2021 report, and postsecondary accreditation.			
8/26/2021	Donna Russo-Savage	AOE	yes	Comments that led to initiation of rulemaking on Series 7000, now in process.			
9/18/2021	Megan Calla	Potential independent school founder	yes	Generally pleased with the direction that the rule changes have taken. Primary concern is the vague references to LEA's determination that a placement is "appropriate" (Rule 2229.4(b)). Suggests re-wording to help with consistency and readability.			
9/18/2021	Megan Calla	Potential independent school founder	yes	Section 2222 Definition of special education fees should read, "... funds paid by <u>an LEA</u> (school district or supervisory union) to an approved independent school..."			
9/18/2021	Megan Calla	Potential independent school founder	yes	Section 2223.3 in the third sentence should read, "A school meeting approval requirements in SBE Rules 2226 (<u>Application</u>) and 2227 (<u>Approval</u>) but choosing..."			
9/18/2021	Megan Calla	Potential independent school founder	yes	Section 2229.4 subsection (d) should use the word "conditioned" instead of the word "based."			
9/28/2021	Mill Moore	Vermont Independent Schools Assn.	yes	"VISA does not support use of public funds in any school with discriminatory enrollment or hiring practices."			
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to definition of "approved independent school" and questions whether this means that every independent school can receive public funding.			
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to definition of "approved independent school" and questions whether this means that a student eligible for special education can attend any independent school in Vermont. Questions how a student can receive their special education services.			

11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to definition of "therapeutic approved independent school. Submits that not all students who are on an IEP need a therapeutic school, asks why the rule would categorize all schools to be "therapeutic." Cites example of I.N.S.P.I.R.E. school for Autism. Submits this is not a therapeutic school in the mental health sense. Recommends that only CERT schools are considered to be therapeutic. Requests that the word "therapeutic" be removed.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to the definition of "therapeutic approved independent school." Questions whether this means that every independent school must be approved for all disabilities. Submits that language should be clear if a school will be approved for all disabilities or if the school can pick and choose.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to Section 2223, Procedure for approval, which requires a review team of two people. Submits that the team should include one person who has knowledge and expertise in special education if the school is applying to be approved for special education.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to Section 2223.2 Report. Points out that the section refers to a "recommendation" and a "report." Suggests that a detailed report should be written that includes a recommendation. States that this should accompany the SBE paperwork that is written up and provided, and should be a separate document.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2225.2 "tuition for out of state schools." Questions whether the host state needs to be approved by their agency of education for specific disabilities.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2226.3 which requires a "statement of how it is designed to serve children with disabilities." Questions whether all independent schools will be required to be approved for all disabilities, or no disabilities? Suggests that it makes no sense for all independent special education schools to be approved for all disabilities. States the schools will not have the capacity or expertise to cover all the disability categories.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to Section 2227 which includes accreditation or licensing for boarding programs. States that DCF does not license all residential facilities/schools. Gives the example that Greenwood School is not licensed by DCF.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to Section 2229.1 "Enrollment: Requirements for Independent Schools, Students and LEAs." Questions whether this means that each of the academies must enroll all students who apply there. Asks how school choice will work. Suggests modifying language to be more clear.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.1 in the second sentence. Questions whether this means that independent schools that are approved for IEP/504 students are not eligible for public funding. Questions whether the schools will be all special education funded.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.2 in the first sentence. Questions whether the school is required to demonstrate that it has the special education staff to cover the disabilities they will be approved for. Suggests that the school should have to demonstrate they have sufficient staff to cover the disabilities they are being approved for.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to Section 2229.2 in the second sentence. States that the minimum standards of services should be an IEP Team decision. Submits that if a school cannot provide the services outlined in the IEP, then the school should not admit the student. The Secretary should not be establishing the standards of services. Recommends eliminating the language.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(d). Suggests eliminating the language. Submits that it goes against IDEA.

11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(e). Suggests eliminating the language. Questions the 30 days to figure out a solution. Submits that the solution should be that the student cannot attend the school if the school cannot provide the student services.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(f). Questions why the hearing officer process should be included. Suggests eliminating the language.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.4(i). Questions why a student should go to a school that can't meet their needs. Suggests eliminating the language.
11/2/2021	Alicia Hanrahan	Randolph	yes	Refers to 2229.7. Suggests that this process needs a timeframe. Recommends notification within 5 business days.
11/2/2021	Alicia Hanrahan	Randolph	yes	2230.1 Exceptional Circumstances - Approval Process. Questions whether this means the Secretary can agree to place a student in a school not approved for special education. Suggests modifying the language to be more clear.
11/2/2021	Alicia Hanrahan	Randolph	yes	2231.1. Agreement as to costs. States AOE does not have their own contract/agreement with independent or residential facilities for students placed by other agencies. AOE agrees to the contract that has been developed by DCF or DMH. Recommends that AOE has their own contract with residential facilities when placed by another state agency.
11/2/2021	Alicia Hanrahan	Randolph	yes	2231.2. Recommends eliminating this requirement.
11/2/2021	Alicia Hanrahan	Randolph	yes	2232 Rate Approval for Therapeutic Schools. Questions if this is for day placements. States if not, why would an independent school submit an application if already approved by AHS. Recommends that language be clear.
11/2/2021	Alicia Hanrahan	Randolph	yes	2234 Corrections. Questions if this is referring to Community High School of Vermont. Suggests eliminating "as if it were an independent school" because Community High School is already considered to be an independent school.
11/2/2021	Alicia Hanrahan	Randolph	yes	2235 Tutorial program definition. The reference to "Commissioner" should be changed to "Secretary."
11/2/2021	Alicia Hanrahan	Randolph	yes	2235.2.6 Renewal. Submits the application should also include information regarding the number of days each student attended. States that tutorials have a habit of keeping students over 6 months.
11/2/2021	Alicia Hanrahan	Randolph	yes	2235.3(h). Suggests the program should include a minimum of 10 hours a week, plus special education services.
11/2/2021	Alicia Hanrahan	Randolph	yes	2235.4. Recommends revising language to state that only the AOE rate set tutorials should be included here.
11/2/2021	Alicia Hanrahan	Randolph	yes	2238. Distance Learning Schools. Recommends revising language to state that public funds are not to be used for distance learning schools.
11/2/2021	Alicia Hanrahan	Randolph	yes	2271.4. Recommend that a detailed report is written that includes a recommendation. This should accompany the SBE paperwork that is written up and provided. Should be a separate document.
11/2/2021	Alicia Hanrahan	Randolph	yes	2272. Recommends that the language be modified to include minimum course of study in 16 VSA 906.
11/2/2021	Alicia Hanrahan	Randolph	yes	2272. Recommends that the language should be updated to include a discipline policy.

11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2222 Definitions. Submits that "Therapeutic" label is inappropriate. Further states that: independent school rules should either use a generic label or distinguish between approved schools which provide treatment and those that do not. To label all approved schools which limit enrollment to IEP/504 students gives a state-approved imprimatur to schools which is tantamount to false advertising. Other states rely on Vermont's approval standards to enroll out-of-state students in Vermont approved schools and labelling schools as therapeutic when they do not provide treatment services for students is false. Vermont DOES have therapeutic schools which are approved by the state to provide treatment for students. These schools go through a more rigorous process (Concurrent Education Rehabilitation and Treatment (CERT)) than is included here, in part to satisfy MEDICAID requirements for treatment services. In order to provide treatment for students, the schools must have appropriately licensed/professional, clinical staff. If an approved IS does not have licensed clinical staff to provide treatment to students, it should not be labeled "therapeutic" anymore than a public school that has a social worker and a counselor on staff should be labeled "therapeutic." The VT Department of Mental Health has established minimum standards for children's mental health which should be linked to a determination that a school provides "therapeutic" services. Those schools which do provide treatment are associated with Designated Agencies. Only schools with qualified staff to provide treatment should be labeled "therapeutic" otherwise the label falsely implies services which</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2222 Definition of "tuition" links to 2225.2. Does not make sense.</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2222 Definition of "tuition." States: Tuition defined here only refers to the provision of general education. There is no definition for special education "tuition" only "special education fees"; these definitions are inconsistent with Section 2232 which purports to set tuition rates for schools serving IEP/504 students which uses the term tuition. If the intent is to provide these schools with "tuition", based on the definition section, the school is receiving funds for general education. The schools could then receive "special education fees" on top of general education tuition (generally the way the large academies work, tuition plus excess costs for special education or a separate program which may establish a separate tuition pursuant to 16 VSA 826. All schools should receive general education tuition as all schools must provide general education. The payment for special education should be clearly defined in these rules as excess costs or special education tuition. There is inherent inconsistency in schools which meet education quality standards and all the rest of the schools which do not meet those standards. There is inconsistency between statute rule and practice. There is no way for the state as a whole to manage special education costs without a breakout and identification of those costs from general education costs. There currently exists four different cost identification mechanisms (none of which use the same criteria): rate-setting in schools which only serve IEP/504, CERT rates, excess costs and announced separate special education tuition at independent schools meeting EQS. The move by the legislature to achieve parity in costs per 16 VSA 2973(b)(2)(B)(ii) is not</p>

11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2232. Rate Approval. States: The initial rate set for an independent school should be robust and mirror the CERT rate process or the Private Non Medical Institution (PNMI) rate process because of the level of detail required in those existing state-run processes. These 2200 series rules do not distinguish between non-profit and for profit schools. The PNMI rules, at least, limit revenue by for profit business to 5% annually. Excess revenues are recaptured and off-set operating expenses in the following year. Since education is an essential government service, the use of for profit businesses (privatizing an essential government service) the State Board can establish a reasonable cap on profits for schools. These rules do not make any effort to protect the Vermont taxpayer and the education fund from fraud, waste and abuse. These rules should state how much profit is reasonable for a for profit institution to earn from public funds. Use of private entities or contracts with private entities for essential government services should be accompanied by efficiencies/economies and equivalent quality of service. If the service is neither quality or economically advantageous for the state, then it results in a waste of precious resources and prevents Vermont from reaching any standard of affordability. Since there is a lack of disclosure of expenditures required by the proposed rate-setting process, profit/revenues in excess of actual expenses is impossible to determine.</p> <p>The board should establish what level of profit is included in "costs reasonably related to the level of services provided by the school" and a mechanism to recapture revenue in excess of that .</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2232(d)(1) States: The use of broad categories of expenses in a rate application is unhelpful in determining a limited-enrollment independent school's alignment with direct-cost rates because of the necessary break-down in labor costs. For a school to list salaries for all employees in one category, it is impossible to distinguish administration, support, teaching, janitorial, clinical and non-teaching support staff.</p> <p>In order to determine alignment with direct-cost rates, the budget detail has to include costs by position/qualification/service. At a minimum, the budgets submitted by limited-enrollment independent schools should include the level of detail that public school budgets publish to voters.</p> <p>Since taxpayers do not get to vote down limited-enrollment independent school budgets, the oversight must be shouldered by the state. These rules do not provide sufficient detail of expenditures to enable the state to ensure limited public resources are not wasted. The lack of transparency in using broad categories in a rate-application, as set forth in these rules does not enable cost comparison, cost containment (forced efficiencies) and protect from fraud, waste and abuse.</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2232. States that there are no provisions in these rules requiring accountability. Submits that a rate application should be signed under penalty of perjury by the limited enrollment director, owner and board chair to ensure an appropriate level of accountability for proposed budgets.</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2232. States that there are no provisions in these rules to required reporting of actual expenditures on an annual basis.</p>
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2232 (j). States that there are no provisions in these rules to hold schools accountable for inappropriate billing practices. To prohibit a school from exceeding the maximum tuition rate without an enforcement mechanism is hollow. Schools which exceed maximum tuition rates without permission from the Secretary should be required to refund the payments to school districts whose budgets are approved by taxpayers which include payments to independent schools.</p>

11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232. States that there are no provisions in these rules which distinguish between schools which operate on a school calendar similar to public schools (175 days) and those operating "year round" (220 days). Submits that the problem with the lack of distinction is the impact on what is included in "annual tuition." These rules do not account for the existing practice of independent schools charging extended school year (ESY) services outside of annual tuition. Since the max rate process includes ALL expenses divided by capacity, schools which charge districts for ESY services are using staff whose salaries were included in the max rate. This is double billing and these rules do not prohibit this practice.
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232. Submits that these rules do not prohibit an approved limited-enrollment school from charging "consulting fees" on top of tuition. If labor and operational costs are fully paid for using the maximum tuition, any additional charges to a school district for any services (regardless of what they are called) is using taxpayer funding personnel to generate revenue in excess of expenditures (proposed budget). This practice is not prohibited by these rules. If a school receives public revenue from tuition to provide a educational services the school should not be able to "sell" additional services to school districts because there is no separation of budgets and personnel between the "business" and the school. This can only be accomplished at the state level as individual school districts do not have visibility of the "big picture" as total costs are spread over sending districts. Visibility of these practices can only be seen and regulated at the state-level. In simpler terms, one entity should not receive revenue for its total operational and labor costs from public funds and simultaneously operate a business selling services to public schools which are the source of the original public funds using the same staff/building/operations, etc. Those services were already paid for once. In order to have transparency a business budget must be separated from the school budget with separate personnel to protect the taxpayers and the education fund.
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232(d). Submits that the rule does not define "restricted revenue sources."
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232(d)(1). States that the rules do not specify or provide clarification on operational costs. The opacity leads to dilution of the education fund. Ex. Fees included in tuition rates paid to parent designated agencies which operate schools. This is only visible at the state level during rate setting. The rules permit such fees to be rolled into operational costs without scrutiny for their reasonable relationship to the level of services provided to students served.
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232. Submits that these rules do not provide guidance or clarification regarding program costs as to what expenditures may be included that are reasonably related to the level of services provided to students served.
11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	2232(d)(2). States: The rule does not provide for appropriate staffing ratios. Neither the Vermont Standards Board for Professional Educators (VSBPE) or the SBE has established appropriate and measurable staffing ratio standards (i.e., case load limits for special educators, case managing and providing specially designed instruction). In order to a school to be able to adequately serve students on IEPs, the amount of FTE's of qualified staff must be directly governed by the services required to be delivered by the school. Staffing ratio standards would have to consider the levels of student need (moderate, intensive needs etc.)

11/3/2021	Clare O'Shaughnessy	Taxpayer	yes	<p>2229.6 and 2232(d)(1), Rule 2229.6 and Rule 2232(d)(1) States that all schools receiving public funds must be required to establish and maintain a financial management system which provides for adequate internal control assuring the accuracy of financial data, safeguarding of assets and operational efficiency.</p> <p>States, in addition: prior to receiving approval to receive public funds, all schools must be required to provide documentation to both sending schools and the state upon request to prove educational services were appropriately delivered. This includes attendance, transcripts, progress reporting, grades, etc., including documentation logs showing the delivery of special education and related services were delivered in accordance with IEPs/504 plans.</p> <p>All schools must be required to maintain student records and upon closure provide for the storage, maintenance and upkeep of those records, especially student transcripts/permanent records.</p>
11/5/2021	Sue Ceglowski	Vermont School Boards Association	yes	<p>The Vermont School Boards Association requests the General Assembly guarantee, through law, that all public and independent schools receiving public funds adopt and exercise, equal and equitable opportunities in admissions, programs and practices in order to operate in the state of Vermont, and That the state invigorate the moribund school approval processes for public and independent schools to assure operational, financial, and educational accountability and excellence.</p>
11/5/2021	Rebecca Holcombe		yes	<p>States that the rules expand a weak architecture for fee-for-service for special education in private schools. This model has been costly and had poor outcomes in the healthcare context.</p>
11/5/2021	Rebecca Holcombe		yes	<p>States that the state has proposed a census-based model for special education in public schools, and the opposite for taxpayer funded private schools. Submits that the state is putting public school districts on a budget, and at the same time, through the fee-for-service model for private schools, the state is undermining the effort by making taxpayers and districts responsible for paying private vendors through the model that fragments care, incentivizes billable treatments and is not accountable for outcomes.</p>
11/5/2021	Rebecca Holcombe		yes	<p>States that the school districts have very little leverage when contracting with independent schools. They are not allowed to negotiate or set prices. They have limited leverage to ensure services are focused on value to prevent further problems later. They retain responsibility for remediation if independent schools fail to provide services required by IEPs.</p>
11/5/2021	Rebecca Holcombe		yes	<p>With respect to schools associated with designated agencies, states that districts are not given opportunity to challenge billing. Schools are allowed to raise fees without justification.</p>
11/5/2021	Rebecca Holcombe		yes	<p>States that by using the model in the rules, the state incentivizes provision of more services and more expensive services regardless of student need, particularly for Medicaid match services. Provides example of value-based vs fee-for-service in SLP context. States that this model might need to be addressed by the legislature.</p>
11/5/2021	Rebecca Holcombe		yes	<p>Recommends that the State Board address known risks of the fee-for-service model.</p>

11/5/2021	Rebecca Holcombe		yes	States first risk is inequitable access. The current rules undermine inclusive intent by preserving the requirement that any student with disabilities meet other enrollment criteria. Cites 2229 "student meets the other requirements of the school's enrollment policies." Recommends adopting equitable enrollment policies, and consult CA charter school requirements as a model.
11/5/2021	Rebecca Holcombe		yes	Gives examples of practices that prevent equitable enrollment: fees, steering, capping enrollment of students with disabilities, messaging, using test scores for enrollment, requesting discipline records, dismissal of students based on student behavior, dismissal of students based on parent behavior, religious requirements and statements of faith, exclusion of students eligible for 504 plans.
11/5/2021	Rebecca Holcombe		yes	States second risk is transparency and accountability. The rules must ensure greater transparency and accountability for schools that are taxpayer funded and oversight to ensure education funds are only used for approved educational purposes.
11/5/2021	Rebecca Holcombe		yes	Submits that PNMI rules are quite robust. Describes proposed rules as weak oversight. States that if there is cost shifting or excess billing, it will be to the education fund and to the less well protected education taxpayers.
11/5/2021	Rebecca Holcombe		yes	Proposes that the rules should be comparable to the PNMI rules.
11/5/2021	Marilyn Mahusky	Vermont Legal Aid	yes	Rule 2229.1. "... and who is placed in an approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA" States this phrase misinterprets the term "placement" as that term is used and understood in the IDEA.
11/5/2021	Marilyn Mahusky	Vermont Legal Aid	yes	Submits that this phrase will prevent students with disabilities who live in tuition towns from attending the school he or she would attend if nondisabled. Treats students with disabilities differently, because they may not attend the school of choice until after the IEP team meets and approves the choice.
11/5/2021	Marilyn Mahusky	Vermont Legal Aid	yes	Recommends that the Census Based Funding Advisory Group should again consider this provision prior to adoption.