

## Further Proposed Amendments to Rule 2200 by SBE Subcommittee on Independent School Rules Updates

Note: These amendments are presented here are mark-up of and subordinate to the amendments that have been proposed by the Act 173 Advisory Group. This document is not intended to accurately represent language of Rule 2200 in its current state. It represents the additional amendments the SBE Subcommittee would make on top of the other proposed rule changes pending before the SBE.

[Item H](#)

### **Rule 2200 INDEPENDENT SCHOOL PROGRAM APPROVAL (2200)**

#### **Section 2220 Statement of Purpose.**

The purpose of independent school approval rules is to assure effective, available and equitable educational opportunities for students enrolled in Vermont's independent schools in accordance with state and federal law and aligned with the purposes set forth in Act 173.

#### **Section 2221 Statutory Authority.**

16 V.S.A., § 166 and 16 V.S.A., § 2958(e), § 2973.

#### **Section 2222 Definitions.**

Agency: means the Vermont Agency of Education.

Approved independent school: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in Rule 2225 (tuition from public funds).

Approved independent school ineligible to receive public funds: means an independent school that meets the requirements in Rule 2227 but does not meet the requirements of rules concerning the delivery of special education services in Rule 2229.

Board: means the Vermont State Board of Education.

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

Therapeutic Approved Independent School: means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

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

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

Secretary: means the Secretary of the Vermont Agency of Education.

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

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

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

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

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

Tuition: means funds paid by a school district to an approved independent school for general education in accordance with Rule 2225.2.

### **Section 2223 Procedure.**

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. An application shall meet the requirements § 2226 below.

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

#### **2223.1 Visit.**

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

#### **2223.2 Report.**

The committee shall present a written recommendation regarding approval to the Secretary. 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 Secretary to the State Board. The report shall contain the findings of other agencies of state government which inspect such facilities.

#### **2223.3 General Conditions for Approval.**

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be recommended for approval only on the condition that the school meets the requirements of Rule 2229, below. A school meeting approval requirements in 2226 and 2227 but choosing not to enroll students requiring special education services may be recommended for approval but it may not receive public tuition.

#### **2223.4 Review**

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

#### **2223.5 Renewal.**

Not less than six months prior to expiration of a School's approval, the Secretary shall send an application packet and a letter notifying the school 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.

#### **2223.6 Extension.**

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

#### **2223.7 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.

#### **2223.8 Denial, Revocation or Suspension of Approval.**

Prior to recommending denial, revocation or suspension of approval the Secretary shall initiate a formal investigation pursuant to rule 2223.8.2. Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue ~~obtain the written~~ a written recommendation opinion on the same. of the Council of Independent Schools. If, after receiving the council's recommendation opinion, the Secretary determines that denial, revocation or suspension of approval is warranted s/he shall notify the State Board of the recommendation and provide notice to the school. The State Board shall hold a hearing pursuant to V.S.A. Title 3 chapter 25 to consider the Secretary's recommendation. ~~of the reasons for the proposed action and shall afford the school an opportunity to be heard by the Board.~~

- (a) After providing an opportunity for hearing, the Board may revoke, suspend or impose conditions on the approval of an approved independent school for:
  - (1) Failure to demonstrate the school has the resources required to meet its stated objectives;
  - (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools; or
  - (3) Failure to report any of the financial events listed in (b) below.
  - (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).
  
- (b) An approved independent school shall report to the Secretary within five days after its knowledge if any of the following events, unless the failure is de minimus
  - a. The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;

- b. The School's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
  - c. The school's failure to maintain required retirement contributions;
  - d. The school's use of designated funds for nondesignated purposes;
  - e. The school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;
  - f. The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
  - g. The school's insolvency as defined in 9 V.S.A. §2286(a).
- (c) If the Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. §166(b)(8)(B).
- (d) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:
- (I) conduct a school visit to assess the school's financial capacity;
  - (II) obtain from the school such financial documentation as the review team requires to perform its assessment; and
  - (III) submit a report of its findings and recommendations to the State Board.
- (e) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.
- (f) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

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

### **2223.8.2 ~~Investigations~~Complaints.**

~~The Secretary shall conduct an initial investigation in the case of R~~reports or complaints ~~to the Secretary concerning matters~~ related to the approval standards and laws that apply to approved independent schools. ~~shall be investigated if it appears such action is warranted.~~ If, following an initial investigation, the Secretary finds a violation of approval standards or laws that apply to approved independent schools, the Secretary should first determine whether the matter can be resolved through informal means, such as provision of regulatory guidance, and confirm that corrective action is taken by the

school. Upon a determination that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved independent school on probation. At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation. An approved independent school may appeal the imposition of probation to the State Board by requesting a hearing (above). The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.

#### Formal Investigations

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 team will conduct the investigation ~~after initial inquiries~~ and will inform the Secretary and the school of the results. The process in rule 2223.8 shall then apply. 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 agency.

#### **Section 2224 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 Agency 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. A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency of Education within five days of a change to its accreditation.

#### **Section 2225 Tuition from Public Funds.**

##### **2225.1 Tuition for Independent Schools in Vermont**

(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Rule 2227 and Rule 2229. Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

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

(b) The Secretary has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).

##### **2225.2 Tuition for Out of State Schools**

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. The 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 2226 Application.**

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

2226.1 The name and address of the school.

2226.2 A statement of the school's philosophy and purpose.

2226.3 A description of the school enrollment including a statement of how it is designed to serve children with disabilities.

2226.4 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.

2226.5 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.

2226.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.

2226.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.

2226.8 Statements regarding professional staff including:

2226.8.1 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.

2226.8.2 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.

2226-8.3 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.

2226.9 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.

2226.10 The school calendar.

2226.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A., § 166(b)(3).

### **Section 2227 Approval**

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

An independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be further required to be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This additional accreditation requirement does not apply to an independent school that enrolls only day students or to an exchange program in which students and families make arrangements for student housing outside of the independent school's involvement.

The board must make the following findings prior to approval:

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

2227.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

2227.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library services, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

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

Further Proposed Amendments to Rule 2200 by SBE Subcommittee o

2227.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

2227.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

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

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

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

2227.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

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

2227.10 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.

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

\*\*\*Rule 2200 continues, but the Subcommittee's work ends after Rule 2227\*\*\*