



February 10, 2021

To: Vermont State Board of Education

From: Mill Moore, Executive Director

Re: Rate-setting rulemaking progress

An independent schools stakeholder group<sup>1</sup> is working with the AOE on the special education rate-setting rules. Agreement appears to be near on rules for the circumstances in which a school must file with the AOE for a rate approval. The stakeholder group now is drafting further rule proposals. This memo outlines the matters the group expects to address.

The group proposes rules addressing the two general requirements 16 VSA § 2973(a)<sup>2</sup> places on the Secretary of Education: a requirement to consult with affected schools prior to rate-setting followed by the rate setting itself.

Consultation rules should include annual AOE statewide assessments of LEAs' current and projected enrollment requirements by disability category, followed by a report to the therapeutic schools in which the AOE reviews current and emerging needs and then concludes by holding a group consultation meeting in which minimum standards and anticipated needs may be discussed.

The group's rate-setting approach begins with a requirement that the AOE establish standards for rate comparison and procedures for conducting rate analysis including a procedure to accumulate an audit trail for each decision point. The AOE currently has no such standards, procedures or audit trail practices. Standards, procedures and audit trails all must be made public. We view these requirements as ordinary governmental responsibilities, expected in any regulatory environment.

The current rate application form is extremely detailed. We think unnecessarily so. We propose the AOE collect data by categories such as instructional services, administration, buildings & grounds, professional services, etc. This proposal is linked to a proposal that the unnecessarily detailed application form leads the AOE into influencing decisions about educational methods that should be the schools' responsibilities. For example, some schools rely heavily on behavioral interventionists while others have a different philosophical and organizational approach. A category-based analysis will allow the schools to

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<sup>1</sup> Mill Moore, Drew Grading (Kindle Farm School) and Carrie Hathaway (Howard Center) representing the Vermont Independent Schools Association and Tom Lovett (St Johnsbury Academy) and Laura Pelosi (Burr & Burton Academy & Bellcate School) representing the Council of Independent Schools.

<sup>2</sup> 16 V.S.A. § 2973(a): The Secretary shall establish minimum standards of services for students receiving special education in independent schools in Vermont; shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the Agency and school districts for tuition, room, and board based on the level of services; and may advise independent schools as to the need for certain special education services in Vermont.

use varying approaches and to be innovative, without the AOE making decisions about specific service providers' salaries and benefits.

The group proposes greater flexibility for the use of school capacity figures as a key data point in setting cost-per-student rates. Enrollments must be expected to vary often among special education school populations. Enrollments for start-up schools are particularly difficult to forecast. Adherence to a single capacity number and to the somewhat arbitrary 90-percent policy have created fiscal management problems and have discouraged development of new therapeutic school capacity in regions where capacity appears to be insufficient.

We also propose rules to allow schools to earn a reasonable rate of return on invested capital and to accumulate an income surplus as a hedge against unanticipated adversities. These are ordinary business practices that should not be regarded as unusual or unwarranted, plus approved independent schools must be given the scope to meet statutory financial stability requirements<sup>3</sup>.

Finally, the group will propose to delete the current obsolete rule requiring adherence to the Generally Accepted Accounting Principles in the Agency's Handbook for Financial Accounting, with a rule requiring adherence to the Generally Accepted Accounting Principles<sup>4</sup> established by the Financial Accounting Standards Board.

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<sup>3</sup> 16 V.S.A. 166 (b): ... the Board's rules must at minimum require that the school have the resources to meet its stated objectives, including financial capacity ...

<sup>4</sup> <https://www.accounting.com/resources/gaap/>