

November 29, 2016

Vermont State Board of Education
219 North Main Street, Suite 402
Barre, VT 05641

The purpose of this statement is twofold: 1) to clarify the intent of the proposed draft rules for the State Board of Education Rule 2200 Series for approval of eligibility to receive public dollars if you are an independent school, and 2) to identify some changes the State Board plans to make to the proposed draft rules prior to submitting them to formal public comment. By clarifying these issues in advance, the State Board hopes to focus preliminary input on two key issues so feedback can address those concerns, as well as the appropriate way to address them in rule.

The principles driving the proposed changes are proper accountability of the state's funds, equality of opportunity, non-discrimination, and updating of language (State Board of Education meeting, November 17, 2015).

The rules were last comprehensively reviewed in 2001 and a great deal has changed since then. The following represents the key revision areas:

State Board Rule Making

While not a topic of revision, there have been concerns about the State Board's rule-making authority. The state has evaluated and regulated private schools for over a century. In more recent actions, the Legislature expressly reaffirmed the State Board's authority and responsibility to establish and implement rules governing independent schools in 1981 [16 V.S.A. Section 164(14) and in 16 V.S.A. Section 166]. Specifically, 16 V.S.A. Section 166 refers to requirements related to accreditation and delivery of special services. As a state level policy body, the State Board is tasked with ensuring that public dollars that are spent in independent settings advance the state's compelling interest in quality and equity for all students.

Finances

Existing law (16 V.S.A. Section 166) states, "The Board's rules at minimum require that the school has the resources required to meet its stated objectives including financial capacity." A financial collapse will place the school in the state's hands, at potentially significant costs, as well as possibly leave students stranded. The State Board is aware of recent fiscal collapses of charter schools in other states such as the California Charter Academy. It has also experienced collapse directly in the context of another sector it regulates (higher education) in the form of Burlington College, for which the state is now picking up costs.

Currently, the State Board has no capacity to effectively ensure the public's compelling interest in ensuring that independent programs that are publicly supported are operating at scale and in a sustainable way.

Robust evaluation by a national accrediting entity would provide some assurance. In the event an institution might be failing, as was seen in the case of Burlington College, which was NEASC accredited, some additional assurance may be necessary.

Effects on Vermont's Tuition System

These proposed rules do not affect Vermont's historical tuition system in any fashion. Under statute, school districts decide by a vote of the electorate whether to tuition or operate. If a district votes to tuition students, it may do so to any public school or approved independent school. The proposed rules do not abridge this right of school districts; they do attempt to ensure that approved schools are willing and able to serve all students from tuitioning districts. The State Board seeks to ensure that all children have access to the same school options as their peers.

Discrimination

The Common Benefits Clause of the Vermont Constitution provides "[t]hat government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such a manner as shall be, by that community, judged most conducive to the public weal," (*Chapter I, Article 7 of the Vermont Constitution*). See also 16 V.S.A. Section 1 and the Vermont Supreme Court's Brigham decision. The State Board, as a state entity, is charged with ensuring that state resources are used for the common benefit. Open enrollment policies ensure that state resources are used to create institutions that are equally accessible to all of the public.

Serving Special Education Students

More than two-thirds of our tuition students are served in six independent schools that serve all areas of disability. These schools represent schools that were all at one point public schools, though in some cases public schools with private governance until the 1990s. Many more students are in independent schools that serve students in some areas, but not all areas, of disability. The proposed rules would require publicly-supported schools to be willing to serve all areas of disability. This does not mean independent schools must maintain standing staff in each area even if they have no children with a particular disability. Practically speaking, this means the schools would have to have plans in place for how they would respond if a student with a given disability enrolled. The home school district for the student serves as the LEA (as it does currently) and reimburses the independent school for special education services in the IEP, including any additional contracted services associated with the IEP (as it does currently).

Teacher Credentials

Independent schools do not have to hire licensed teachers, with the exception of special education teachers. This is true in the current rules, and the State Board does not propose to change this practice. The State Board will modify the proposed draft rules to correct ambiguous language that some have suggested includes a requirement of licensure of all teachers in independent schools.

Rule 2222.1(a)(iv): "Meeting all Federal and State Laws and Rules Applicable to Public Schools"

This statement, as written, has been interpreted to be overly broad. The State Board will clarify this language. The State Board's intent is to ensure all approved schools comply with state and



federal regulations restricted to safety and health laws, such as fire codes, fingerprint supported background checks and requirements for mandatory reporting of child abuse.

Closing Schools

There have been suggestions that the new rules will result in independent schools being closed. Given the decrease in student enrollments state-wide, there may be closures in both the public and private sectors. In fact, 13 public school buildings have closed since 2006 and since many independent programs are even smaller than public schools, such closures may happen completely independent of the proposed rules due to the overall decrease in students to be served.

The current rules can be found here: [State Board Rules Series 2200](#)

The proposed changes to the rules can be found here: [Proposed Changes to State Board Rule Series 2200](#).

Public comment can be submitted to the State Board for review at: SBE.PublicComment@vermont.gov ; kindly specify “SBE Rule 2200 Series” in the subject line of the email.

Sincerely,



Stephan Morse, Chair
Vermont State Board of Education

