
State Board of Education

Draft Meeting Minutes

VIRTUAL Teams Meeting/Video/Teleconference

Call in #: 1-802-828-7667, Conference ID: 598 094 123#

1 National Life Drive, Davis 5

Montpelier, VT 05602-2501

Date: March 9, 2022

Present:

State Board Members (SBE): Oliver Olsen, Chair; Jennifer Samuelson, Vice-Chair; Patrick Brown; Tom Lovett; Jenna O'Farrell; Tammy Kolbe; Lyle Jepson; Kim Gleason; Gabrielle Lucci; and Dan French.

Agency of Education (AOE): Emily Simmons, Maureen Gaidys.

Others: Meagan Roy, Marcy Webster

Item A: Call to Order/Roll Call/Amendments to the Agenda

Chair Olsen called the meeting to order at 8:02 a.m. and roll call was taken. There were no amendments to the agenda.

Item B: Public to be Heard

There were no members of the public to be heard.

Item C: Adopt Rule Series 2200 Changes

Vice Chair Samuelson thanked the Rule 2200 subcommittee for their hard and collaborative work. She said at the SBE meeting in February, the SBE made some additional changes to Rule 2229 and sent it back to Act 173 Advisory Group (Advisory Group); they had a special meeting on March 3, 2022 and made some changes and sent it back to Rule 2200 subcommittee, making further changes to Rule 2229. She offered Roy to address the State Board. Roy said she sent a short summary to Chair Olsen and Vice Chair Samuelson. She explained that the special meeting of the Advisory Group was prompted with each member being charged with giving their final opinion and any proposed changes. Some changes were small and technical and there was a more substantive recommendation to strike language about other enrollment practices. The Advisory Group took action on the proposed changes and sent them to the subcommittee. Roy noted that there is an issue that these rules are silent on – and that is what happens to a student's placement when a dispute resolution is filed. That issue is unresolved, and the Advisory Group wanted that brought to the attention of the Rule 2200 subcommittee.

Vice Chair Samuelson said the Rule 2200 subcommittee discussed this issue and have some proposed language under 2229.4(b). Simmons sent [Annotated Rule 2200 Version 2](#) yesterday and that has all the most recent suggested changes. Chair Olsen clarified that Act 173 is very specifically targeted at ensuring that students with special education services are afforded the same opportunities as their non-disabled peers in independent schools accepting public tuition. He wanted it clear that this does not equate to the concept of open enrollment. Roy clarified that the purpose of Act 173 is “non-discriminatory enrollment on the basis of disability.” She said the Advisory Group is aware of the concept of non-discriminatory enrollment vs. open enrollment and that it agreed that Act 173 did not contemplate open enrollment. Kolbe acknowledged the great work of the Advisory Group and their thoughtful work on these issues. Vice Chair Samuelson agreed that the work of the Advisory Group has been enormous and complicated and thanked them for their work.

Simmons walked the SBE through the changes in [Annotated Rule 2200 Version 2](#) on pages 10 and page 12. Roy agreed that those additions were mostly in alignment and helpful.

There was discussion on protected classes and some omissions, Public Accommodations Act applies to all schools, and reference to statute (Title 9, Chapter 141 and Title 21, Chapter 495) that also protects employees.

Simmons shared an edit that Gleason offered related to parsing decisions around applications and capacity in section 2229.1(a)(3). The revised sentence is suggested to read, the school’s process for making enrollment decisions when “the number of applicants” exceeds capacity. There were no further questions on Rule 2229.

Simmons reminded the group that the SBE approved all responses to public comment at the January and February special meetings. The provisionally approved responses to public comment dictated every change in the current draft from the draft as filed with the Interagency Committee on Administrative Rules (ICAR). She wanted to review these responses for the record: (The pages that follow show deleted language (strikethrough) and new language (underlined)).

Page 1: Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).

Page 6: 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~~ In addition to the accrediting agencies are listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England and the New England Association of Schools and Colleges. 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~~ 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, then 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 within five days of a change to its accreditation.

Page 7: 2226.6 A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements. Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following: 1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 141 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 495. 2) An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations. 3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements.

Page 9: 2227.8 The school satisfies lawful legal requirements relative to its facilities, fire drills, and the immunization of its pupils students against disease. The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease. 2227.12 The school complies with the requirements of 16 V.S.A. §255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry. 2227.13 For schools that receive public tuition, the school complies with requirements concerning nondiscriminatory school branding, as dictated by the Secretary. The school complies with legal requirements concerning non-discriminatory school branding.

Simmons said she inadvertently missed adding a line for a requirement for schools receiving public funding to have a school records policy. She thanked Vice Chair Samuelson for catching that. This corresponds to comment 66, which spoke to assurances. She hasn't found an obvious place where the addition will fit. There was discussion. The language decided upon to be added is, "The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure." It was decided that this would fit best in new Rule 2227.14.

Chair Olsen said he sent a status update and a draft of the rules to House and Senate Education Committee Chairs and Legislative Counsel. There was one item flagged by Legislative Counsel in Rule 2229.4(g) as non-comformant to Act 173 on page 12. There was discussion. It was recommended that this be changed to read: "g. If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff cannot meet the student's special education needs, the LEA shall immediately convene an IEP meeting to consider alternatives."

There was discussion on sharing with the Legislature discussions that general language is preferred and more helpful, situations that go beyond staffing that should be considered by a hearing officer, more general language requires a statutory change, and continuing this conversation at another time.

Gleason added that tuition for out-of-state programs is not governed by these rules and that the process for in-state approvals is different than for out-of-state approvals.

Chair Olsen thanked everyone involved with this process – Vice Chair Samuelson for her leadership and Lovett and Gleason for their efforts and all stakeholders for their input. It was a very inclusive process that resulted in arriving at a good place. He further acknowledged Simmons as the unsung hero and praised her patience and hard work over the last year.

Chair Olsen asked for a motion. Simmons suggested that the SBE also delegate someone to complete final edits and file the rules with the Legislative Committee on Administrative Rules (LCAR) and represent the SBE at the LCAR hearing.

Samuelson moved that the SBE adopt Annotated Rule 2200, which reflects the responses to public comment approved by the Board at the January and February regular meetings, with amendments to Rule 2227.13, Rule 2227.14, Rule 2229.1, and Rule 2229.4 as recommended by the 2200 Rules committee and further amended at today's meeting and as presented. Lovett seconded. Chair Olsen asked for a roll call vote. Yeas: O'Farrell, Samuelson, Kolbe, Lovett, Gleason, Jepson, and Olsen. Nays: none. Abstentions: none. Chair Olsen waited to Brown to rejoin. The motion passed 7:0:0.

Samuelson moved that the State Board delegate to the Rule 2200 Committee Chair, the task of working with AOE staff to file the rules with LCAR, give permission to the Committee Chair to authorize non-substantive edits to produce the final, proofread draft prior to filing, and appear with AOE staff on behalf of the SBE before LCAR at its March 2022 meeting. Chair Olsen suggested a friendly amendment that didn't limit this to the March meeting. Samuelson restated the motion: That the State Board delegate to the Rule 2200 Committee Chair, the task of working with AOE staff to file the rules with LCAR, give permission to the Committee Chair to authorize non-substantive edits to produce the final, proofread draft prior to filing, and appear with AOE staff on behalf of the SBE before LCAR at a date to be determined. Gleason seconded. There was no discussion. Chair Olsen asked for a roll call vote. Yeas: Gleason, Jepson, O'Farrell, Kolbe, Samuelson, Brown, Lovett, Olsen. Nays: 0 Abstentions: 0. The motion passed 8:0:0

Chair Olsen offered Brown the opportunity to vote on the previous motion (approval of the rules). He voted affirmative. The revised vote on the first vote is 8:0:0.

Adjourn

Samuelson moved to adjourn and thanked everyone for their work and for their attendance at today's special meeting. Brown seconded. Chair Olsen called the vote; it was unanimous. The meeting adjourned at 9:55 a.m.

Minutes prepared by Maureen Gaidys