

State Board of Education

Rules Series 2200 Subcommittee Meeting

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 531 954 832#

One National Life Drive, Room #514

Montpelier, VT 05602

Date: September 15, 2021

Present:

State Board of Education (SBE) Subcommittee Members: Jennifer Deck Samuelson, Chair; Kim Gleason

Agency of Education (AOE): Emily Simmons, Suzanne Sprague

Others: Sue Ceglowski (Vermont School Board Association), Jeff Francis (Vermont Superintendents Association)

Call to Order/Amendments to the Agenda

Chair Samuelson called the meeting to order at 11:03 a.m. There were no amendments to the agenda.

Approval of the August 2, 2021, Minutes

Gleason moved to approve the draft minutes. Samuelson seconded. A vote was called. The minutes were approved.

Public to be Heard

No members of the public addressed the Subcommittee.

Review of and Discussion Regarding Public Comment Received thus Far to Proposed Changes to Rule Series 2200

Chair Samuelson reviewed the sources of public comment received thus far. Simmons shared her spreadsheet, which reflects six comments received from Bill Mathis, Lisa Purcell, AOE attorneys, and Megan Calla.

Simmons began with the most general comments. With regard to the public comment of not seeing any mention of independent schools needing to abide by equal employment opportunity commission for nondiscrimination, the AOE proposed, in written testimony dated August 26, 2021, adding a phrase at the end of Rule 2226.6 to make this requirement clear. As proposed, Rule 2226.6 will read: “A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable State and federal requirements, *including compliance with Vermont’s Public Accommodations Act, 9 V.S.A. §§4500 - 4506.*” (italics emphasizing the AOE’s suggested addition). Discussion of whether Vermont’s Public Accommodations Act (PAA) applies in both enrollment and employment situations and the procedure for bringing a complaint alleging violation thereof. The subcommittee proposed adding parallel language to proposed Rule 2229.7. As proposed, Rule 2229.7 will read: “After receiving approval for public tuition, an independent school shall notify the Secretary of any significant changes to its special education program, professional staff, governance, financial capacity or facilities, *including compliance with Vermont’s Public Accommodations Act, 9 V.S.A. §§4500 - 4506.*” (italics emphasizing the subcommittee’s suggested addition).

Discussion of conditioning receipt of public funds by an independent school on its certification that it will not discriminate in its employment practices; need to have this language vetted; and whether to include this change in Phase I or Phase II changes to the Rule Series 2200.

Simmons briefly reviewed the current general state of employment law in Vermont with exceptions for a religious, denominational, or non-profit organizations when it comes to sexual orientation and gender identity. Under 16 V.S.A. §166, the SBE must approve an independent school that meets several specific requirements and substantially complies with all statutory requirements for independent schools and the Board’s rules. Discussion whether an independent school would be violating any state law if it made a decision that, outside of a religious organization, might be discriminatory. The subcommittee wants to respond to public comment to say what it is doing, when it is doing it, and why. It was decided to seek legal advice on current state of the law for employment practices generally by religious organizations; whether there are different implications for organizations that accept public funds; whether the SBE can move to a model like it did with special education where a school can be approved but not eligible to receive public funds if it discriminates in its employment practices; and whether the SBE can embark on rule making on this issue on its own or needs to wait for the legislature to amend §166.

With regard to the public comment that “appropriate placement” is too vague, Simmons reviewed that, as discussed during the Rule 2360 rule making process, “appropriate placement” is a term of art in the Individuals with Disabilities Education Act, 20 U.S.C. §1400 (2004). All special education teachers and administrators know the questions that go into deciding that a placement is appropriate based on a student’s Individualized Education Plan.

Adjourn

Gleason moved to adjourn; Chair Samuelson seconded. Chair Samuelson adjourned the meeting at 12:28 p.m.

Minutes prepared by Jennifer Samuelson