

DISCUSSION DRAFT

2200 Evaluation of Private Education Programs Independent School Program Approval

2210 (reserved).

2220 Approval of Independent Elementary and Secondary Schools
Statement of Purpose, substantially drawn from Vermont State Board of Education,
November 17, 2015:

Whereas, the State Board rules concerning the “evaluation of private education programs” (2200 series) have not been revised from time to time with the last revision in ~~since 2004~~ 2010, and

Whereas, a broad number of changes have occurred in society and in education during that time, and

Whereas, many rules and practices may now be inadequate or antiquated; and

Whereas, Goal One of the State Board’s strategic plan calls for identifying the magnitude and causes of achievement gaps;

And Goal Two of the State Board’s strategic plan calls for a review and updating of State Board rules;

The State Board of Education requests the Secretary of Education to recommend to the State Board revisions to these rules and practices in order to modernize, enhance equity and quality, and make them more efficient. Specifically,

☉☉Updating antiquated language - The Board requests the Secretary’s recommendations on updating the language and the system, in whole and in part.

☉☉Fiscal Accountability – The law requires the State Board to assure that each independent school has ~~adequate resources~~ “the resources required to meet the stated objectives including financial capacity” (see 16 V.S.A. §166(b)). The Board considers the current rules insufficient to meet this statutory requirement. The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format determined by the Secretary, that GAAP procedures be employed, and that independent auditors be periodically employed.

☉☉Equal Opportunity and Equity – As evidenced by current enrollment patterns. ~~Currently~~, the provisions for assuring equal access and admission to private schools are not sufficient. It is the view of the State Board that equal opportunities must be available to all in admissions, program availability and discipline; and that the rules explicitly address these issues.

☉☉The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The Board requests that independent schools be evaluated periodically using a NEASC and/or a state evaluation team system (see 16 V.S.A. §165).

☉☉Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The Board realizes and accepts that certain schools may specialize in providing services for certain categories of disability and that, in the best interests of students, circumstances will vary.

Definition:

“Approved independent schools” are schools that are eligible to receive public funding, and which as a condition of that approval, meet and maintain certain minimum standards, as set forth in these rules. The State allows use of public dollars for education in private institutions that meet the standards and state purposes defined in the approval rules.

“Specialized independent schools” are approved independent schools providing focused, differentiated and specialized instruction to students with behavioral and learning challenges/disabilities in an alternative environment to the public school setting. An independent school with a significant focus on the instruction of focused athletic skills and development of students in an identified sport may be considered a specialized independent school.

2221 Statutory Authority (includes, without limitation) 16 V.S.A. §164(14), 16 V.S.A., § 166 and 16 V.S.A., § 2958(e).

2222 Application for Approval.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. Any independent school seeking approved status as either an initial or renewal application shall comply with Rule 2223. Not less than 180 days prior to the expiration of an independent school’s

approval, the Secretary shall send an application packet and a letter notifying the school that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time.

2222.1 Tuition from Public Funds.

(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless:

(i) the school is approved for special education purposes pursuant to these rules, and through a special education application process developed by the AOE that is consistent with the requirements of the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400), the Special Education Rules of the Vermont State Board of Education at State Board Rule 2360 et seq., and Chapters 99 and 101 of Title 16 of the Vermont Statutes Annotated. It is not expected that a school will maintain a complement of standing staffing in each disability category. Properly licensed teachers or educational specialists may be retained and program approvals obtained on an “as needed” basis pursuant to Rule 2223.

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant to Rule 7320 of the State Board’s rules, or is approved through state evaluation methods as available and described in 16 VSA §165. The cost of such evaluations shall be paid by the independent school and may include tiered levels based on school size as defined by the Secretary. 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.

(iii) the school has an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable state or federal law, including, the Vermont Public Accommodations Act (codified at 9 V.S.A. § 4500 et seq.), the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 701 et seq), and the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400). In the case of “specialized independent schools”, the Secretary is authorized to determine whether the school’s enrollment policy complies with the requirements of this subsection 2222.1(iii).

(iv) the school complies with all other state and federal laws and rules applicable to Vermont public schools regarding student safety and student health in order to provide ~~including, without limitation providing~~ a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

~~(v) the school has adequate financial resources to maintain operations and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule~~

~~7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. The Secretary may also recommend, as part of any approval recommendation to the State Board, that budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, that independent auditors be periodically employed by the applicant school, and any/all audit results be made available, in whole, to the Secretary, upon request.~~

(v) the school demonstrates financial capacity to operate and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule 7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. A school shall also submit to the Secretary of Education on an annual basis the school's most recently filed IRS Form 990. Additionally, the school shall submit with its application for approval the school's Form 990 most recently submitted to the Internal Revenue Service and one of the following:

- (1) A statement of financial capacity by an accrediting agency recognized by the State Board at Rule 7320; or
- (2) An audit letter by a certified accounting firm from the present or immediate prior year describing in detail the financial capacity of the school and certifying and attesting to the financial capacity and resources of the school to meet its stated objectives. The letter shall be accompanied by a copy of the audit from the present or immediate prior fiscal year performed by the same certified accounting firm.

When, in the judgement of the Secretary the financial capacity of a school is in question based upon the information provided above or information independently provided to the Agency, the Secretary of Education may also recommend, as part of any approval recommendation to the State Board or annual review of the IRS Form 990, the appointment by the Secretary of a review team of at least three members, to conduct a school visit to assess a school's financial capacity. The school shall provide the review team full and complete access to financial records and personnel charged with financial oversight and/or responsibilities for the school. The review team shall submit a report of their findings and recommendations to the Secretary and the State Board.

NEW PROVISION UNDER DISCUSSION – Rule 2222.1 (a)(vi):

(vi) Open Enrollment

An approved independent school is not required to accept publicly funded students. If an independent school opts to accept publicly funded students, then on or before February 1 each year, the independent school shall define and announce the number of publicly funded students it will enroll under this section. Capacity considerations may include limits based on the space available in the program, class, grade, or school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

If more than the allowable number of students wish to attend a school under this section, then the school shall devise a nondiscriminatory lottery system for determining which students may attend.

(a) Application and notification.

(1) An independent school shall accept applications for enrollment for publicly funded openings until March 1 of the school year preceding the school year for which the student is applying. Independent schools shall not ask applicants to disclose information regarding eligibility for special education under the IDEA. If a student applicant discloses in the application process that he or she is eligible for special education under IDEA, the independent school shall not deny that student enrollment.

(2) An independent school shall notify each publicly funded student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify the independent school of his or her decision to enroll or not to enroll by April 15 of the school year preceding the school year for which the student has applied; provided, however, that if a student is eligible for special education services, the IEP team shall meet pursuant to Rule 2223, make a determination about the ability of the independent school to provide the services required by the student's IEP, and notify the independent school by May 1.

(b) Enrollment.

(1) An enrolled publicly funded student shall be permitted to remain enrolled in the independent school without renewed applications in subsequent years unless:

- (a) the student graduates;
- (b) the student is no longer a resident of the district which pays tuition;
- (c) an IEP team determines that an independent school is unable to provide the services and supports required by a student's IEP; or
- (d) the student is expelled from school in accordance with this section.

(c) Suspension and expulsion.

(1) An independent school is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(2) When a publicly funded student is subject to disciplinary action, the independent school shall afford the student due process procedures as follows:

(a) In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in section (2)(c), the hearing must precede the suspension and the district shall provide: (1) notice of the charges; (2) explanation of the evidence against the student; (3) opportunity for the student to tell his or her side of the story;

(b) In cases of a long term suspension which is generally more than 10 days, unless a school establishes a shorter period, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the proper administrator and the school shall provide:

- (i) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (ii) opportunity to present evidence;
- (iii) opportunity to cross-examine witnesses;
- (iv) decision in writing to parent/guardian.

(c) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the independent school may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter.

(d) If an enrolled student is eligible for special education services, the independent school shall follow the discipline and due process requirements of Rule 4313.

2222.2 Tuition from Public Funds, Out of State Independent Schools

(a) 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 and substantially comply with the approval standards set forth in these rules.

(b) In order for tuition to be paid to an independent school in another state that is a special purpose school that is substantially similar to Vermont special purpose approved school, the out of state special purpose school shall substantially comply with the approval standards set forth in Rule 2224.1 and Rule 2224.2 of these rules.

2222.3 Length of Approval

The Board may grant initial approval and renewal of approval for not more than five years. The approval term must track, and cannot exceed, a current period of accreditation status by an accrediting entity recognized by the State Board at Rule 7320.

2222.4 Extension

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

2222.5 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.

2222.6 Investigations

Reports or complaints to the Secretary concerning matters related to an approved independent school's adherence to approval standards as set forth in these rules shall be investigated if it appears such action is warranted. 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 review team shall promptly investigate the allegations, and report its findings, and any recommendation(s) to the Secretary, within forty-five (45) days. The Secretary, after receiving the report and any recommendation(s) of the review team, shall, after consulting with the Council of Independent Schools, make a recommendation to the State Board at its next scheduled meeting, or as soon as practicable, about the continued approval status of the school.

2222.7 Denial, Revocation or Suspension of Approval

If the Secretary, after consulting with the Council of Independent Schools, determines that denial, revocation or suspension of approval is warranted, he or she shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the State Board. Approval of an independent school shall be revoked or suspended by the State Board based on a finding that the school no longer meets the criteria for approval as set forth in these rules, including without limitation, (i) Rule 2222.1 and (ii) that the school has failed to adequately provide a learning and (as applicable) residential environment for students that is safe and healthy.

2223 Special Education Approval of General Education Independent Schools

~~In order for an independent school to receive approval for purposes of these rules, it must offer services to students with disabilities in each special education category of disability as defined in by the Special Education Rules of the State Board of Education at Rule 2360 et seq.~~

In order for an independent school to admit publicly funded students, the school must employ or have access to a licensed special educator.

If a publicly funded student is admitted to an independent school under the open enrollment process described in Rule 2222.1, and that student is eligible for special education services, a meeting of the student's IEP team shall be called to determine what special education and related services the student will need to be successful in the independent school, and update the student's IEP goals and services accordingly. The independent school shall appoint a representative to attend the IEP team meeting as part of the enrollment process.

If the school district of residence determines that paying tuition to an independent school is not permissible under Rule 2228.2(1) due to lack of appropriate program approval, the local educational agency (LEA) and the independent school and the Agency of Education shall work together to determine an interim service plan. The plan shall focus on how services and supports can be provided within the independent school until the independent school obtains Agency approval under Rule 2228, provided that the independent school shall obtain approval for an enrolled student's disability category within the school year when the student first enrolled.

2223.1 Out-of-state Programs

Unless otherwise determined by the State Board of Education, in order for an out-of-state independent school to receive publicly funded Vermont students, the out-of-state

independent school must be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2223.2 Special provisions applicable to approved independent schools providing special education services and local education authorities (LEA) pursuant to the Individuals with Disabilities Education Act (IDEA) and the Special Education Rules of the State Board of Education

(a) There must be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative.

(b) IEP Teams must identify the personnel to provide IEP services to students. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school.

(c) General education teachers cannot be identified as the provider of special education or related services (as defined in Rule 2360) service providers on IEPs unless they also have a special education endorsement.

(d) Independent school staff must have a copy of the student's current IEP in order to implement the following IDEA requirements:

(i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(ii) Each teacher and provider described in paragraph (d)(1) of this section is informed of--

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) LEA's must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student.

(f) When an IEP Team places a student in an independent school that only serves students with disabilities, the IEP Team, ~~IEP Teams~~, with input from the independent school staff, shall develop a reintegration plan for each student for return to the student's home school. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to the student's home school.

2223.3 Coordination With Responsible Sending Agency

An independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (a) maintaining educational and attendance records and disclosing them to the sending responsible agency and the student's parents;
- (b) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (c) implementing IEPs including documentation of student progress and creating and providing regular progress reports.
- (d) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- (e) these practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2223.4 Educator Licensure Requirements for Special Educators

An independent school shall satisfy the educator licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2223.5 Special Education Rates Charged by Independent schools; maximum rate set by Secretary

(a) The Secretary or his/her designee shall set a maximum rate that can be charged by receiving independent schools for the provision of special education services. The Secretary shall provide a form(s) that an applicant independent school shall complete which provides the Secretary with sufficient information on the previous year's actual costs of the applicant schools for the provision of special education services, beyond those services provided as part of the general education program and accounted for in the regular education tuition, in order that the Secretary has the necessary information to set a maximum rate for the coming school year.

(b) The maximum rate set by the Secretary is not intended to reflect the actual rate charged by the independent school. The actual amount charged shall be set by agreement between an independent school and sending district. The actual amount charged

(i) cannot exceed the maximum rates set by the Secretary, and

(ii) shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students.

(c) An independent school applying for approved status under these rules must assure the State Board that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines actual costs associated with the student's attendance regarding the provision of IEP services.

2223.6 First-Time Applicant for Maximum Rate

An independent school applying for the first time for a maximum rate to be set by the Secretary shall estimate in its application a maximum rate that is as close to projected actual costs as possible, for the coming year, based on relevant factors including, without limitation, anticipated enrollment of students with special needs, nature of services required, and comparative data of other similarly situated independent school applicants for the past two (2) years; the Secretary shall make applications of other similarly situated independent school(s) available for this purpose.

2223.7 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the local educational agency that has educational planning responsibility for the student.

2224 Independent Schools with a specific state purpose (e.g. therapeutic and rehabilitative programs)

There are certain approved independent schools and possibly (future) applicant schools that primarily operate solely for the purpose of providing a specific state purpose, such as a dedicated program of unique special education services, therapeutic services or rehabilitative services. These schools may not be suited, due to their specific mission, to serve all students, or serve all categories of disability as defined by the Special Education Rules of the State Board. Notwithstanding any other provision of these rules, Rule 2224.1 and Rule 2224.2 set forth the approval standards for independent schools with a specific state purpose.

2224.1 General Education Review and Approval and Fiscal Review of Independent Schools with a Specific State Purpose

In order to obtain general education approval, and ensure that the school has the resources to remain fiscally solvent during the period of an approval term, the school shall be accredited for academic and fiscal purposes by an accrediting entity recognized by the State Board pursuant to Rule 7320 of the State Board's rules. In addition, the Secretary shall prescribe a form that requires the applicant school to document how it shall prioritize and provide a learning and (as applicable) residential environment for students that is safe and healthy and comply with any other applicable federal and state laws and rules as may be necessary, to the extent such laws or rules are not covered by the review of the accrediting body.

2224.2 Special Education Review and Approval of Independent Schools with a Specific State Purpose

In order to obtain special education approval the school shall meet the special education standards that apply to approved independent schools as set forth in these Rules, but only for the categories of disability served by the school.

2224.3 Rate Approval for Independent Schools Approved for Specific State Purposes

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Agency on or before July 1st of each year. The Secretary shall notify the independent school of the results of the review on or before August 15th of each year.

(b) If a request for a new rate approval is not submitted by July 1st, the most recent approved rate will be in effect until the following July 1st, when the next rate request is due.

2225 Corrections Education Program

To the extent applicable, the Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within these rules, as may be applicable.

2226 Approval of Tutorial Programs

2226.1 “Tutorial program” means education provided to a student who is placed in a short term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166 and these rules. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.

2226.2 Approval

An approved tutorial program and/or a first time tutorial program applicant shall be subject to the following approval process:

(a) a tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary.

(b) This process and application will address both academic program quality and oversight, as well as special education programming, to ensure that students in specialized environments continue to have access to high quality, academically challenging and supportive learning environments. The Secretary, in his/her discretion, may employ an independent evaluator or require a NEASC accreditation to conduct or replace the academic review.

(c) In addition, the form prescribed by the Secretary shall, pursuant to Rule 2220, require a tutorial program to provide assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term.

(d) An approved tutorial program shall comply with all other state and federal laws applicable to Vermont public schools including, without limitation, providing a learning and/or residential environment for students that is safe and healthy, unless otherwise specifically provided by law.

(e) The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

2226.3 Special Education Approval of Tutorial Programs

In order to obtain approval, a tutorial program shall meet the special education standards that apply to approved independent schools as set forth in these Rules.

2226.4 Rate Approval for Tutorial Programs

(a) Each tutorial program shall annually submit its proposed rates for tuition, related services and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program proposed to charge for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, including, without limitation, those set forth in the *Handbook For Financial Accounting For Vermont School Systems*.

(c) The Secretary shall review each tutorial program's annual rate request. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the Secretary will pay to the tutorial program for those services

(d) The Secretary's determination shall be final.

2226.5 Preservation and Maintenance of Student Records by Tutorial Programs

Approved tutorial programs shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

2226.6 Renewal of Tutorial Programs

Not less than 180 days prior to the expiration of tutorial program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the

Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

2226.7 Denial, Revocation or Suspension of Approval of Tutorial Programs

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board.

2227 Preservation of Student Records

Approved independent schools are required to maintain their student academic records in a form prescribed by the State Board of Education. The Secretary is authorized to insure that the student academic records are in appropriate form. An approved independent school is required to inform the Secretary in the event it intends to close, at least ninety (90) days prior to any permanent closure, and to surrender its student academic records to a repository designated by the State Board for storage. The repository is authorized to make verified copies available to students and former students.

2227.1 Maintenance of Academic Records

Each Approved independent school operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the independent school discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

~~2228 Transition Provisions~~

- ~~(a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.~~
- ~~(b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.~~
- ~~(c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.~~
- ~~(d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.~~
- ~~(e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2223(iii).~~
- ~~(f) On or before July 1, 2020 all approved independent schools must meet all the requirements of Rule 2223.~~

~~(g) Rule 2230 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.~~

Restore existing Rule 2228 in its entirety with noted revisions.

2228 Special Education Approval of Independent Schools.

2228.1

(1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it shall obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.

(2) Limitation of Special Education Approval.

Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.

(3) Out-of-State Programs.

Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2228.2 (1) Placement Prohibition.

No responsible agency, as defined by Rule 2360.3, shall make a special education placement in an independent school that has not been approved for special education purposes nor shall such a placement be made in an independent school that serves special education children who are in a category of disability different from that under which the child was determined to be eligible for special education unless the placement is pursuant to:

(a) Subsection (2) of this rule,

(b) A court order, or

(c) A hearing officer order.

(2) Exceptional Circumstances - Approval Process

Upon application by a responsible LEA, the ~~Commissioner~~ **Secretary** may permit, in exceptional circumstances, a special education placement in an independent school that is

approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Notwithstanding Rule 2366.2.2(7), in instances in which the ~~Commissioner~~ Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the ~~Commissioner's~~ Secretary's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.

(a) Exceptional circumstances exist when:

(i) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve children with the category of disability under which the child was determined to be eligible for special education; and

(ii) The proposed placement is deemed appropriate by the child's IEP team.

(b) The ~~Commissioner~~ Secretary may specify conditions under which the placement is to be carried out.

2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

(1) Admissions;

(2) Least restrictive environment;

(3) Discipline;

(4) Graduation;

(5) Faculty qualifications; and

(6) Faculty-child ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed children on IEPs;

2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies, and other service providers serving a child by:

(1) Maintaining educational records and disclosing them to the sending responsible agency and the child's parents;

(2) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;

(3) Implementing IEPs; and

(4) Providing prior notice to the sending LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.

These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2228.4 Written Agreements Required

2228.4.1 Agreement as to Costs

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed child who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the ~~Commissioner~~ Secretary, in accordance with 16 V.S.A. §2948, the agreement shall be with the ~~Commissioner~~ Secretary of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the child's enrollment.

2228.4.2 Agreement as to Non-Instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed child who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the ~~Commissioner~~ Secretary, this agreement shall be with the local educational agency that has educational planning responsibility for the child.

2228.5 Special Education Approval Procedures

- (1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education may at any time submit an application for special education approval to the ~~Commissioner~~ Secretary.
- (2) Application for special education approval shall be submitted in writing to the ~~Commissioner~~ Secretary in accordance with the format prescribed by the ~~Commissioner~~ Secretary.
- (3) The procedures for special education approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.

2228.6 After receiving approval for special education purposes, an independent school shall notify the ~~Commissioner~~ Secretary of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The ~~Commissioner~~ Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the ~~Commissioner~~ Secretary may return to the State Board for a change in the school's approval for special education purposes. If the ~~Commissioner~~ Secretary petitions the State Board for a change to an independent school's approval for special education purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.

2228.7 Independent schools that are approved for special education purposes shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. §2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes

(1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the ~~Commissioner~~ Secretary on a form prescribed for that purpose.

(2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education children. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(3) The ~~Commissioner~~ Secretary shall review each special education approved independent school's annual rate report. If the ~~Commissioner~~ Secretary concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly-placed special education children, the ~~Commissioner~~ Secretary shall make a determination as to the maximum rate that public schools and the ~~State Department~~ Agency of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the ~~Commissioner~~ Secretary, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.

- (a) Upon such referral by the ~~Commissioner~~ Secretary, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.
- (b) The State Board's determination shall be final.
- (4) Time lines for rate approvals from the ~~Department~~ Agency
- (a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the ~~Department~~ Agency prior to November 15. The ~~Commissioner~~ Secretary shall notify the independent school of the results of the review on or before January 15.
- (b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

2228.9 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

Section 2230 Recognition of Distance Learning Schools, Statutory Authority:16 V.S.A. Section 166 (b) (6).

2231 Definition.

A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the state board for approved independent schools.

2232 Procedures and Standards.

The distance learning school shall meet the procedures and standards set forth in the rules applicable to approved independent schools, which because of its structure can be applied, and the following rules:

- (a) Pursuant to 16 V.S.A. § 166(b)(6), a distance learning school approved under these rules shall not be eligible to receive tuition payments from public school districts.
- (b) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (c) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.

- (d) The distance learning school maintains tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment;
- (e) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.
- (f) In the event that the school closes, the distance learning school has policies for tuition adjustment or refund.

2232.1 Preservation and Maintenance of Student Records by Distance Learning Schools

Distance Learning Schools shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

[NOTE: Rules 2240 through 2260 regarding Postsecondary Certification are currently undergoing amendment through Administrative Rulemaking Procedures and not included herein as such rules are not final.]

2270 Private Kindergarten Approval.

Statutory Authority: 16 V.S.A. Section 166(b)

A private kindergarten program shall comply with the procedures and standards set forth in the rules applicable to approved independent schools, and any other laws or rules of as may be applicable to a private kindergarten program, including any applicable rules of the Department for Children and Families.

A private kindergarten program may be approved to operate by the State Board, for up to five years, without having received accreditation from an accrediting entity recognized by the State Board at Rule 7320, upon (i) a favorable recommendation from the Secretary,

(ii) documentation that the program complies with any/all preapproval requirements of the Department for Children and Families,

(iii) satisfactory assurances and documentation that the program complies with the requirements of 16 V.S.A. § 166(c);

(iv) satisfactory assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term and also provide a learning environment for students that is safe and healthy;

(v) comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

2270.1 Renewal

Not less than 180 days prior to the expiration of private kindergarten program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

Transition Provisions -

- (a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.
- (b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.
- (c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.
- (d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.
- (e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2223(iii) and (vi).
- (f) On or before July 1, 2020 all approved independent schools must meet all the requirements of Rule 2223.
- (g) Rule 2230 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.