

TO: State Board of Education  
FROM: Sarah Buxton  
RE: 2200 Rule Series Amendments  
DATE: August 9, 2023

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### Seven High Level Questions to Contemplate

1. Does the Statement of Purpose correctly signal the Board’s intent in promulgating these rules? (This provides guidance in interpretation if there is ambiguity in application.)
2. Do the Act 1 related changes adequately capture the principles and goals of Act 1 as it applies to approved schools? (See Attachment A; in green)
3. Does the reorganization of the sections provide more clarity to the public in how to navigate the laws and regulations related to this rule? (The side-by-side is helpful for this one)
4. Are the criteria for accrediting agencies sufficient to warrant recognition by the Board?
5. Is the annual compliance certification straightforward enough to be administered effectively?
6. Does the specific articulation and inclusion of Title 16 directives in the “requirements” section add value?
7. Does the process of allowing the Secretary to design the application form for school approval, coupled with the Board’s specific findings of compliance with Vermont law, meet the objectives of the Board in ensuring that all schools are operating within the law?

To answer these questions, use Attachment A (below), the Side-by-Side Rule Comparison provided, or a copy of the CLEAN or MARKED-UP Drafts to familiarize yourself with the proposals.

## ATTACHMENT A

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The sections pasted below will help you identify and focus on some of the high-level amendments. The orange font indicated general changes. The green font indicates major Act 1 changes (but not all).

### **Section 2220. Statement of Purpose**

These rules are organized to provide clarity to schools regarding requirements for initial and continued approval to operate and, and if applicable, to receive public funds. Ongoing compliance with state and federal laws and regulations is expected through annual compliance assurances. Accrediting agencies that meet criteria indicating high quality, experience, and alignment with Vermont's educational values will be recognized and the schools they accredit will enjoy an accelerated approval process.

In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), these rules prohibit discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status.

These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:

- (a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 of this Manual and in this Statement of Purpose;
- (b) why all persons should have equitable access to social and economic opportunity;
- (c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and other forms of unfair treatment; and
- (d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board of Education Manual of Rules and Practices. This manual adopts a definition of Discrimination that is broader than its legal definition. Nothing herein shall create a private right of action.

### **Section 2222. Definitions**

"Anti-discrimination" means actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are

necessary to counter discrimination as defined in this Manual, and that promote a fair, just and equitable learning environment for all students.

“Anti-racist” means actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter racism as defined in this Manual and that promote a racially inclusive learning environment for all students.

“Caste” means a hierarchical social system of exclusion and dehumanization based on invented notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.

“Civic and Community Engagement” means individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.

“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.

“Culturally and Linguistically Diverse Students” means those who are members of home, cultural and social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.

“Culturally responsive teaching” is an evidence-based approach that incorporates knowledge of diverse cultures, languages, and perspectives into learning activities and curriculum design, including connecting students' life experiences and ways of learning, that helps students to both access rigorous curriculum and to develop higher-order thinking skills.

“Culture” means a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.

“Discrimination” means any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

“Intercultural Competency” describes practices and actions to pursue deep understanding, mutual respect, and willingness to learn about the cultures of all people, especially those who have been marginalized, silenced, and/or undervalued.

“Interdisciplinary” means examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives, including those from their lived experiences, into a coherent understanding or analysis.

“Equity” or “Equitable” means that each student receives the resources and educational opportunities to learn and thrive in the classroom and in all aspects of learning, school life, career technical education, and community-school interactions, and to discover and cultivate their talents and interests. To be achieved, equity requires an inclusive school environment and may necessitate an unequal distribution of resources and services based on the needs of each student.

“Ethnic Group” means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, nationality, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion, persecution, or other inhuman treatment.

“Ethnic Studies” means interdisciplinary, age appropriate and grade-appropriate curricula and programs dedicated to the historical and contemporary study of race, ethnicity, and indigenous peoples (including the Indigenous People of Vermont). This requires a critical examination of the experiences and perspectives of racial and ethnic groups and indigenous peoples that have suffered systemic oppression, marginalization, discrimination, persecution, and genocide within and outside the United States. “Ethnic Studies” may involve a critical examination of these experiences and perspectives through the lens of the characteristics of social identity groups.

“Ethnicity” means a concept that embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics.

“Inclusive” or “Inclusion” means school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential

“Language” means systems of conventional and unconventional spoken, visual-manual, technological, and written symbols, which human beings use personally and as members of social and cultural groups to express themselves; shape identity; acquire knowledge, mediate power, play, create, and imagine; build and sustain familial, social, and cultural bonds; and express a wide range of personal needs, aspirations, and emotions.

“Linguistic diversity” means the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students’ experience and academic success; eradicating bias, racism, and discrimination;

and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.

“Neurodiversity” means the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include autism, attention deficit hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.

“Race” means any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color.

“Racism” means the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or which advances the claim that racial, ethnic, or cultural groups are inherently superior or inferior, thus explicitly arguing or implying that some groups are entitled to dominate, exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.

“Restorative Practices” means the whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. It encourages members of the school community to be constantly present, attending to needs as they arise. It exercises their ability to be dynamic rather than static in their responses. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerability.

“Social Identity Group” means a group of people who share common characteristics that shape their identity and promote a sense of unity, including sex, sexual orientation, gender identification, disability, class, socio-economic status, or other characteristics that are fundamental to identity.

### **2223.2 Nondiscrimination Requirements for Approved Schools**

No student in an approved school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.

### **2223.3 Specific Requirements for Approved Schools**

Each approved school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, free from hazing, harassment, and bullying. Educational opportunities shall be provided in an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive manner, based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

#### **2223.3.3 Instruction, Faculty, and Special Services**

(b) Instructional Strategies. Educators shall be supported in:

1. examining their own identities and biases and fostering a learning environment that recognizes multiple ethnic, cultural and racial perspectives; presents and critiques historical counter-narratives; and

encourages students to examine issues and expressions of social equity within and beyond the classroom or school;

2. modeling and setting high expectations for all students - regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities and promoting respect for student differences;

3. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;

4. communicating in culturally and linguistically responsive ways;

5. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;

6. using educational and assistive technology to reduce barriers to learning and heighten student engagement;

7. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;

8. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;

9. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;

10. employing the use of data to adapt pedagogy to unique student needs and incorporate student feedback into instructional design and curricula;

11. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;

12. designing learning experiences that improve students' wellbeing, including opportunities for physical movement in the classroom; and

13. fostering a positive classroom culture using restorative practices where appropriate.

(c) Curriculum Content. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive and accessible to families and community members.

1. All approved schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ethnic and social equity studies.

2. The course of study offered shall be adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

**2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities**

Approved schools are expected to provide for the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in understanding and implementing recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum each approved school shall develop and maintain the following:

- (a) a comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161(a), that it is clear and consistently enforced to address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy;
- (b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;
- (c) practices that comply with the requirements of 16 V.S.A. §253 - §255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;
- (d) procedures that do not permit any work study student listed on the Vermont Internet Sex Offender Registry to work at the school pursuant to 16 V.S.A §260;
- (e) practices that ensure that adults employed in the school receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in 33 V.S.A. §4912(8), and sexual violence and opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);
- (f) opportunities that provide access for eligible students to participate in dual enrollment, accept credit awarded, collect enrollment data, and provide support to students in accessing the opportunity and otherwise transitioning to postsecondary enrollment pursuant to 16 V.S.A. §944;
- (g) a procedure to providing the names and addresses of publicly funded students enrolled at the approved school to the school's regional career technical education (CTE) center;
- (h) An enrollment policy designed to serve children with disabilities;
- (i) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;
- (j) comply with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;



(k) maintain a policy pursuant to 16 V.S.A. §912 regarding a student's right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;

(l) provide students access to menstrual products at no cost pursuant to 16 V.S.A. §1432;

(m) comply with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;

(n) permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;

(o) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;

(p) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;

(q) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;

(r) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and

(s) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.

#### **2223.3.5 Other Required Activities**

(a) In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved school shall: (a) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. §2005;

(b) maintain a register of the daily attendance of each of its enrolled students;

(c) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;

(d) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;

(e) comply with legal requirements concerning nondiscriminatory school branding;

(f) measure attainment of standards for student performance for publicly funded students, as required under 16 V.S.A. 164(9), and provide data related to the assessments to the Secretary as required by 16 V.S.A. §166(g);

(g) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);



(h) comply with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;

(i) conduct exercises in commemoration of the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;

(j) policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and

(k) comply with other applicable state and federal requirements pertaining to approved schools.

#### **2223.4 Annual Compliance Assurance**

(a) Each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on an annual basis.

(b) In consultation with the Board, the Secretary shall prepare and make available a simplified form to be used to meet the requirement of this section and shall set the date by which schools must submit it to the Agency, which shall not be less than 90 days from the date it is made available each year. The form shall include an assurance of compliance with Subsection 2229.4 (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Schools), that must be completed by schools approved to receive public tuition under these rules. Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above. Schools may request and the Secretary may grant an extension of up to 45 days to submit the annual compliance assurance form for good cause shown, if the request is submitted 14 or more days before the due date.

(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Secretary, the school will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school of its noncompliance and the school shall have five days to come into compliance. If the school fails to submit an acceptable compliance assurance form to the Agency within five days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2226.2 (Investigations), which shall be promptly followed by the due process set forth in 2226.3 (Revocation or Suspension of Approval). If, after a hearing, the Board determines that the school intentionally violated this subsection pursuant to 2226.3(a), it shall decide whether to revoke, suspend, or impose conditions on the school's approval status.

#### **2224.4 Board Approval**

The Board shall review each application for approval and consider the recommendation of the Secretary. The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval in the exercise of its judgment.

(a) [Findings 1-15]

16. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application.

(b) The Board shall make the following findings prior to approval of any school that submitted an accredited independent school application:

1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;

2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and

3. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application

(c) Prior to approving a school's application to receive public funds pursuant to Subsection 2229.6, the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.

### **2224.7 Reapplication**

The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The Secretary may extend the reapplication period for good cause.

### **2226.2.2 Investigations; Due Process Hearing**

(a) The Secretary shall conduct an initial investigation of reports or complaints related to the requirements of this rule and laws that apply to approved schools. The school shall receive notification of the complaint unless contraindicated by the particular facts. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school.

### **Section 2227 Recognized Accrediting Agencies**

(a) The Board shall recognize accrediting agencies that meet the following requirements:

1. operate continuously for at least five years prior to applying for recognition under this section,
2. maintain membership in a peer organization that supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation
3. use a peer review process that includes evaluation by leaders of similar schools,
4. appropriately train all staff and peer reviewers who are involved in the accreditation process,
5. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development, admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable),
6. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session,
7. require that schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress,
8. require that schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;

9. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools that it accredits and provide interim reports during the 1 accredited school's approval period that are sufficient to meet the informational needs of the Board,
10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved schools in Vermont, and
11. agree to review and report on practices and compliance with state-specific requirements, at the request of the Agency, during the initial or interim stages of an approved school's accreditation period.

(b) The Board shall create and maintain a publicly available list of currently recognized accrediting agencies that meet the criteria described in (b) below. Any agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Upon review of each submission, the Board shall determine whether it will recognize the accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicant agencies shall be notified of a decision and any conditions of continued recognition in writing. The Board may remove any agency from the list of recognized accrediting agencies at any time, after finding that the agency no longer meets one or more of the criterion listed below.

(c) The Board shall continue to recognize accrediting agencies listed in Rule 7320 until July 1, 2024.