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Sent: Wednesday, April 5, 2023 2:04 AM

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Subject: Comments on EQS Rule Draft

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Dear EQS Update Committee -

After reviewing your March 30, 2023 working draft of potential changes to Rule Series 2000 (EQS), would like to offer a few general comments.

Limits of SBE Authority & Legislative Intent

As a preface, it is important to be mindful of the statutory parameters established by the General Assembly. The SBE ran into problems in the not-to-distant past where it got out in front of its skis and the General Assembly had to intervene and temporarily suspend specific SBE rulemaking activities in response (Section 42(f) of Act 49 of 2017). To underscore the importance of staying on piste, in 2021 the General Assembly modified 16 V.S.A. § 164(7) to make it clear that any SBE rulemaking needed to be within the "limitations of legislative intent" (Act 66 of 2021) Legislative committee discussions during the development of Act 66 clearly demonstrate that this change was made in response to lingering concerns about the SBE's activities that led to the suspension of rulemaking under Act 49 of 2017.

2100 - Statutory Authority

The proposed changes add 16 V.S.A. § 906 as a source of statutory authority, but this particular statute references the minimum course of study that applies to public schools, approved and recognized independent schools, and home study programs. This particular statute does not delegate any specific rulemaking authority to expand this minimum course of study, so I do not believe that it is appropriate to cite as a source of authority.

2112 - Education Quality Standards

The current statutory framework applies the Education Quality Standards to the public school system (16 V.S.A. § 165) with an opportunity for independent schools to "opt in" to this regulatory structure (16 V.S.A. § 165(f) and 16 V.S.A. § 11(a)(8)). In contrast to other independent schools that are approved by the SBE under Rule Series 2200, independent schools that opt into the EQS (Rule Series 2000) regulatory structure are permitted to charge their full tuition to school districts (16 V.S.A. § 824(b)) .

The last sentence in the proposed changes to this rule states that "Pursuant to 16 V.S.A. § 906, Sections 2114, 2120.1 and 2120.5 shall apply equally to public schools and independent schools." This rule is not clear whether these sections apply to "approved independent schools", "independent schools meeting education quality standards", or "recognized independent schools" - all of which are explicitly defined separately in statute. The proposed change should make it clear that it only applies to public schools and "independent schools meeting education quality standards" as defined in 6 V.S.A. § 11(a)(8). Other areas of the rules should also make it clear that this rules series is applicable to public schools and "independent schools meeting education quality standards" as defined in 6 V.S.A. § 11(a)(8).

If the rules were to apply generally to "independent schools" that could inadvertently bring "approved independent schools" and "recognized independent schools" into the scope of EQS, which could have the unintended consequence of those schools becoming "independent schools meeting education quality standards", triggering eligibility for full tuition reimbursement from local school districts. By explicitly providing an "opt in" provision for independent schools, coupled with the financial implications, it is clear that the General Assembly never intended for the SBE to unilaterally bring all independent schools into the scope of EQS.

Any EQS rules that the SBE would like to have apply to approved independent schools should be promulgated separately under Rule Series 2200. As a practical matter this simplifies administration, while avoiding unintended consequences arising from the interplay of rules and statutes governing independent school funding and new rules tied to Act 173.

2114 Definitions

It appears that there are a number of changes to the definitions, including new defined terms. Some of the proposed changes seek to alter the definition of terms that are explicitly defined in statute. For example, "Personalized Learning Plan" is defined at 16 V.S.A. § 942(10), but the proposed definition in your working draft deviates materially from the statutory definition. In doing so, the proposed rules will conflict with statute and run the risk of running afoul of legislative intent. I recommend that you review all definitions, remove any that are not referenced within the rules, and ensure that any remaining definitions are consistent with relevant defined terms in governing statutes.

Compliance

16 V.S.A. § 165(b) requires the Secretary to determine whether a school is meeting EQS on an annual basis, but there is no mechanism in the proposed rules to intake and respond to complaints about alleged EQS violations from students, families, staff, or members of the public. We put such a mechanism in place for approved independent schools - I recommend that we put an equivalent process in place for schools governed under EQS, which should dovetail and culminate with the remediation steps outlined in 16 V.S.A. § 165(b) - similar to how complaints can result in the suspension or revocation of an independent school's approval status.

the news of a DOJ settlement with the Twin Valley High School in Wilmington raises the question of how a school that apparently had persistent problems with racial harassment was meeting EQS, and why it took DOJ intervention to bring about a resolution. If there had been a process that would have allowed families to lodge a complaint with the AOE, perhaps these issues could have been addressed more promptly through the annual EQS determination process.

Continuous Improvement Plan

The rules should require that continuous improvement plans be posted on the AOE website. The continuous improvement plan is a significant feature of the EQS rules and underlying statute, but I have had great difficulty finding these records in the public domain. They are not going to be an effective accountability tool if they are not readily accessible.

Thank you for considering my input.

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