

Independent School Oversight Update

The Regular Approval and Reapproval Cycle

Several rules within Series 2200 provide for the approval and reapproval process. For purposes of this document, only reapproval is discussed. Recall that Act 78 of 2023 imposed a moratorium on the approval of any new independent schools.

First, the Rules provide what is often called the “hold harmless” provision for currently approved independent schools.

2224.5. Continued Approval. Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

In operation, this rule means that an approved independent school that complies with application requirements will keep its status as “approved” until action by the State Board. That action, when taken, may be a vote to reapprove for up to five years, a vote to reapprove with conditions, or a vote to not reapprove.

In recent years, this rule has had the effect of allowing many schools to remain approved despite the delays in the review/approval cycle. It is the Agency’s goal to restart the normal cycle of review leading to State Board action on the 63 schools that had renewal dates come and go since 2023 (includes 2020, 2021, 2022, 2023, and 2024).

Second, Rule 2224.1.2 outlines the process that AOE will follow to review a school’s application for reapproval, conduct a site visit, and prepare a written report. The process culminates with the Secretary’s written report containing a recommendation to the State Board for its action.

When a report and recommendation are ready for State Board action, the Secretary coordinates with the State Board Chair to ensure it comes before the board in a timely manner.

2224.3. Review. The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination and timely review of applications and reapplications for school approval to promote efficiency in scheduling and expediency in decision-making.

The cycle concludes with State Board action on the Secretary’s recommendation. The State Board can accept the Secretary’s recommended action, or can fashion its own decision on the question of reapproval. If the Board does not find the required elements for the type of reapproval sought by the school, the Board will vote to not reapprove the school. This can result in a school changing status from approved to approved but ineligible to receive public funds, or a loss of all approval status. In this case, the school would need to seek recognized school status from the Agency of Education to continue to operate.

2224.4. Board Approval. The Board shall review each application for approval and consider the report and 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. *[The remainder of this rule is excluded from this document for brevity.]*

Other Enforcement Actions Outside the Regular Cycle

At any point in the regular review cycle, a complaint can be initiated from outside information referred to the Agency, or from the Agency's own initiative. Complaints follow an investigation process that can result in a hearing before the State Board to revoke or suspend a school's approved status. At the hearing, the State Board provides due process to the school and considers the Agency's recommendation for revocation or suspension. The Board can also hold a due process hearing in the event that a court or agency has substantiated actions of discrimination against a student or employee. In either case, the Board provides a decision based on the factors described in Rule 2226.3 and can revoke, suspend or impose conditions on the school's approval status, including the school's eligibility for public tuition.

2226.3. Revocation or Suspension of Approval. (a) After investigation and providing an opportunity for hearing pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearing) the Board may revoke, suspend, or impose conditions on the status of an approved school, including its eligibility to receive public tuition, if it determines that the school has: 1. failed to demonstrate that it has the resources required to meet its stated objectives; 2. failed to comply with a statutory requirement or the Board's rules for approved schools, including failure to submit an annual compliance assurance; 3. failed to report any of the financial events listed in Subsection 2223.3.2(b) (Financial Capacity, Solvency, and Stability); or 4. failed to make an annual enrollment report to the Secretary as required by 16 V.S.A. §166(b)(4). In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions to take, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation. (b) If a court of competent jurisdiction or a state or federal agency determines after investigation that there are reasonable grounds to believe a school has discriminated against a student or employee in violation of federal or state law, the Board may hold a due process hearing to determine if the school's conduct objectively and substantially undermined or detracted from or interfered with a student's educational performance or access to school resources. If the Board makes such a finding, it may revoke, suspend, or impose conditions on the status of the school, including its ability to receive public tuition. The Board shall consider the status of the underlying case with the court or state or federal agency

when deciding whether it would be appropriate to conduct a hearing or to act upon its findings.

The Backlog of Reapprovals

The backlog of reapprovals can be broken down into the stages of review where they currently sit.

- All 63 schools will be required to complete and submit the standard application.
- 13 schools have received an onsite visit, and reports have been drafted for 10. These schools will not receive a site visit unless concerns are identified in the desk review that cannot be rectified by way of technical assistance. (Category 1)
- 27 schools will require an onsite visit. (Category 2)
- 23 schools are NEASC (22) or NNEC (1) accredited and will receive a desk review. These schools will not receive a site visit unless concerns are identified in the desk review that cannot be rectified by way of technical assistance. (Category 3)

The backlog has resulted from a combination of factors: a pause in site reviews during the COVID-19 response and recovery, transition time in response to new rule amendments, and litigation filed against the state and several school districts.

Desk Audit of Rules Implementation – Spring 2024

In response to the rule amendments that took effect on July 1, 2023, the Agency developed and implemented a desk audit/technical assistance survey for all non-therapeutic independent schools to confirm compliance under new requirements.

These schools received an online compliance document titled “Independent School Technical Assistance (ISTA)” with a set of instructions for completion and a deadline for submission to the AOE.

Therapeutic schools were exempt from this round of compliance monitoring.

The form used for the audit guided independent schools to evaluate their current compliance with requirements tied to eligibility for public funds. A school could elect to discontinue eligibility to receive public tuition by signing a voluntary statement to that effect.

The Agency provided targeted assistance, as required, on new program and tuition requirements and referred heads of school/principals to AOE special education staff and resources for questions of compliance with IDEA.

In addition to the desk audit, AOE also provided monitoring of IDEA compliance via General Supervision and Monitoring System (GSMS) to ensure there is connection between students enrolled in approved independent schools and their home supervisory union/supervisory district, which retains the FAPE obligation for its students.

The desk audit and technical assistance found the following:

- 5 (five) schools opted to change status to “approved independent school ineligible to receive public funds”
- All schools except for one provided the name of an employee or contracted individual who has the required licensure to provide special education services. Vermont Academy was the only school that instead provided the name of a staff member who had completed the required module series for alternate route to Special Education Certification Program.
- The Agency flagged two issues for further technical assistance to all schools:
 - Improvements to the required record maintenance and retention policy; and
 - Improvements to the required admissions policy to clearly define the step-by-step process of acceptance for enrollment that does not include any information about the student’s special education needs.

The Agency’s review did not find any issues of noncompliance requiring a recommendation of suspension or revocation of approval status to the State Board.

Restarting the Regular Cycle of Reapprovals

The Agency anticipates the following:

Category 1 schools will be submitted to SBE subcommittee April and May of 2025

Category 2 schools will begin to be submitted to SBE subcommittee in June 2025

Category 3 schools will begin to be submitted to SBE subcommittee April and May 2025

The Independent School Team will review all applications to ensure compliance with SBE Rules, 7-1-24.

- Any approved independent school applications containing deficiencies will receive targeted technical assistance until the school complies or until AOE refers a recommendation for non-renewal to SBE.
- Independent School reviews completed prior to 7-1-24, that have submitted the standard application confirming compliance with new SBE Rules, 7-1-24, will have reports updated and ready for forwarding to the SBE Independent School Sub-Committee.

Special Education Oversight

The majority of the Agency’s technical assistance and work to implement the two sets of Rule 2200 amendments have centered on the rules’ special education-related requirements. It is critically important to ensure understanding of the rules for staff and administrators at approved independent schools as well as staff and administrators at supervisory unions/supervisory districts whose students use publicly funded tuition at independent schools. The rules rely heavily on the successful coordination and cooperation between these groups of educators, so that students receive appropriate services at the school they have chosen to attend.

The Agency continues to provide resources and individual assistance to the field related to ensuring quality services to students, building capacity in special education teaching community, and appropriate oversight of rule compliance.

Rule 2229.2 outlines an approved independent school's responsibilities in staffing. The rule ensures that any approved independent school has at least one employee who has sufficient knowledge of IDEA definitions, processes and services to be a partner to supervisory unions in their role as local education agency (LEA) and an in-house identifier of issues that should be the subject of LEA and approved independent school communication and collaboration. The rule also requires the independent school to have, through employment or contract, staff who have the required licensure to provide special education services.

2229.2. Staffing An independent school approved for public tuition shall demonstrate the ability to serve students with disabilities by employing or contracting with staff who have the required licensure to provide special education services. The school is not required to demonstrate that it has the resources to provide every type of special education service in order to be approved or retain its approval to receive public tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools approved for public tuition in Vermont.

It is difficult to make a blanket determination of what license is required to “provide special education services” regardless of whether the student who needs services attends a public school or an independent school. Many services provided in student IEPs do require an educator with a special education endorsement. Other services instead require an educator with a speech language pathology endorsement or a reading specialist endorsement. Many services included on student IEPs do not require any particular license or endorsement area.

The Agency's oversight of rule compliance will continue to ensure that the school must have the staff necessary to serve the students who are enrolled, coupled with demonstration that the school makes every effort to provide all services to all students who have applied to for admission to the school, consistent with Rule 2229.4 (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools).

The Agency's updated application and the review of both the submitted application and information gained during site visits will provide enforcement of this rule.