

Independent Schools, and Public Education and the Education Quality Standards September 14, 2023

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I have been a special educator and special education administrator in Vermont since 1971. In those many years since I have participated in the development and unfolding of services for children and young adults with disabilities in a variety of settings, private and public, and locally and statewide. In Vermont we need robust and strong public schools and independent school systems for historic and current reasons. That said I am deeply concerned about the direction the State Board of Education takes with the rules as applies to Education Quality Standards in relation to Rule 2200, Independent School Programs Approval processes. Please consider the following concerns.

As the Board considers revising the Education Quality Standards (EQS), the policy of the State is not considered throughout the rules. As written these rules are targeted at public schools and school districts; however, there is a lack of accountability for independent schools providing a substantially equal educational opportunity for all students, especially students with disabilities.

Federal law requires students in private school to meet the same educational standards applicable to public schools, these rules do not require independent schools in Vermont to meet the same standard applicable to public schools which are the EQS. If there is no requirement for transparency of accountability for students educated in independent schools, there is no equality of education in Vermont. With separate standards, there is inequality.

Further, given that independent schools are not held to the same standards of assessment of their programs as the public schools, there is no equity in educational opportunity; these rules are to make schools, ALL SCHOOLS, accountable for discrimination in its many forms. I am also deeply concerned there is not link, connection or consistency with the 2200 rules for approval. Again, this is reflective of two systems where there is accountability and transparency only for public schools. There is a genuine lack of reporting requirements for independent schools which further enables separation of these educational systems.

The designation of an independent school as meeting EQS and a mechanism for accountability is wholly lacking in these proposed rules. The designation allows independent schools to charge more in tuition without the accompanying transparency and accountability.

An assurance is simply insufficient, and I ask you to hold independent schools accountable to sending districts that all students meet the same educational standards applicable to public schools. That is the only way to ensure substantially similar educational opportunities for ALL VERMONT CHILDREN, especially students with disabilities which independent schools are to serve.

I am attaching my comments on the 2200 rules as they contain many of the concerns I have regarding these issues of accountability and transparency. The EQS standards must become part of the independent school approval process if we are to have equal educational opportunities for all.

My concerns center in the following areas:

Vermont Agency of Education Capacity:

- The Vermont AOE lacks the critical capacity and authority to actively oversee the education of students with disabilities within the independent schools, both legally and financially.
- There is a lack of AOE recognized input from the local LEAs as to the functioning and capacity of area independent schools to implement special education services that meet the legal requirements of IDEA, state special education rules and state education quality standards for all students. Specifically, some of the independent schools struggle with serving students, over-rely on discrete services rather than inclusive education as outlined in Act 173, billing is questionable at times, or doesn't conform to special education rules and statute, while there is no established mechanism for local LEAs to appropriately communicate this to the AOE, which oversees these entities.
- A structure for achieving this input from the local LEAs is necessary, even more so with the passage of Act 173 that includes a census-based funding system and a commitment statewide to a multi-tiered system of supports for all students in public school. The census-based funding system cannot stand if the costs charged by independent schools for meeting the needs of students with disabilities are not consistent with Act 173, carefully monitored, transparent and clearly communicated to LEAs (local education agencies, typically the school district) and SEA (State Education Agency, in this case the AOE). This is not possible under the rules as proposed where independent schools will continue to bill under a reimbursement model while Act 173 explicitly and in detail outlines why this reimbursement model is dated and problematic.
- There is a lack of a structured connection between the financial regulatory oversight and transparency required of public schools by AOE and that (not) required of independent schools. This creates an incentive for higher costs in private schools, even as the census-based model requires cost containment and shifting to early intervention and core instruction in public schools.

Role of the Local Education Agency - School Districts

- The rules as proposed demonstrate a lack of understanding of the legally prescribed role of the LEA for the education of children with disabilities regardless of whether the student is in a public or independent school. The role that independent schools must play in implementing an appropriate education within the construct of the highly regulated State and federal laws protecting and governing special education must be clearly identified in the regulations. The LEA is an indispensable partner in this process

by law and regulation, both federal and state. For example, when meeting the needs of students with complex and intense needs it is my experience that some independent schools have difficulty meeting these. Students may be asked to leave without communicating with the LEA. This leaves both the LEA and the student and their family in a very difficult situation both for the education and well-being of the student and family and for the LEA programmatically and legally. The LEA is the legally vulnerable entity in this situation and not the private school.

- Hiring and retaining special education staff is also an area of significant concern for a stable special education delivery system, and for addressing the needs in particular areas of disability. An example from Vermont is an independent school approved to serve students with learning disabilities that employed a single special educator with no background in teaching children to read, nor a plan to address this need.
- The role of the special education team (IEP Team) in identifying the strengths, needs, and services for children with disabilities regardless of whether this is in a public or independent school must be specifically affirmed in rule, as is not the case in the proposed rules. The IEP Team's role in oversight of program implementation is critical and cannot happen without the parent and LEA representative's active participation. **The LEA and SEA remain the legally answerable structures, not the independent school. IEPs are legally binding contracts, not recommendations for implementation. This role of the IEP Team needs to be affirmed in Vermont regulation.**
- There is a critical and pervasive role for both school leadership and general education in the implementation of the overall education program for students with disabilities in both public and independent schools. This context includes the state quality standards and access to the full range of regular and special educational services for these children and young adults. Strengthening the universal level of instruction in all schools is the foundation of early learning for all children. This commitment to strengthening universal first instruction was central to the purpose of Act 173 and was clearly articulated within Act 173. **How will this apply to independent schools as this is the basis for funding special education services within a census-based system model? That is not addressed within the rules as proposed.**
- **A prevalent misconception exists that approved independent schools are truly financially independent. In fact, the bulk of tuition funding for most comes from taxpayer dollars, and especially so for the approved therapeutic schools. Therefore, independent schools should be clearly answerable to the public educational system of laws and practices educationally and financially within Vermont law and regulation. Schools that are dependent on tax dollars should follow the same rules and statutes as public schools, or they cannot function as an integral part of our investment in equitable opportunities for all students including those with disabilities.**

Administrative Costs:

The costs borne by LEAs in maintaining the administrative structures to assure for meeting state and federal requirements in program oversight and financial accounting within independent schools on behalf of students with disabilities must be acknowledged and accounted for. That is not acknowledged in the rules necessary with

Act 173 implementation, nor is it acknowledged in public debate over the cost of education in private settings. These overhead costs are higher when services are delivered in private settings. They are significant and are born by taxpayers. **In the absence of adequately funded oversight of independent schools within the SEA in partnership with both LEA and independent school, there is no ability to provide public assurance that tax dollars are appropriately used to support students.**

Summary:

In summary, most approved independent school placements are largely paid for with public dollars. The responsible public agencies including the LEAs and SEA are legally and financially responsible to the Vermont Legislature, Vermont State Board of Education and the federal government for students identified as having special education needs in these schools. The AOE does not have the capacity and tools currently to work effectively with the independent schools and LEAs in overseeing the independent schools responsible for implementation of special education and Act 173's broad purposes.

Recommendations:

- **Budgeting and finance within independent schools needs to be accounted for in a detailed and transparent way by regulation and financial accounting practice.** Both the State Board of Education and the Agency of Education have a role in establishing these practices. The proposed 2200 rules introduce significant risks related to cost increase and inadequate service, and erode the core intent of Act 173 to strengthen the whole education system recognizing the deeply interdependent relationship between general and special education.
- **It is vital that the Agency of Education have both the regulatory authority and the capacity to oversee and monitor the budgeting and financial accountability of approved independent schools when public funds are granted to these schools. Additionally, a mechanism for LEA input into this process is vital, given the role (under both federal and state law) that the LEA plays in working with these schools on behalf of enrolled children. Including an LEA representative under Section 2223 for independent school review and visits would be one step that acknowledges and empowers the districts sending students to the school and funding them there.**
- **Under 2223.8 Denial, Revocation, or Suspension of Approval or 2223.9 Complaints. When investigation is considered by the State Board of Education the Council of Independent Schools is included. Public school administration representation should be consulted as well when a formal investigation is initiated. This is a significant omission, given the critical role of the LEA.**
- **Under 2224 Reciprocity, accreditation from a recognized accrediting agency must be required to consider Vermont and federal special education regulations and the goals of Vermont's Act 173 given the requirement that "the school is meeting the approval standards". In addition, the Agency needs adequate resources and staffing to meet the public assurance imperative of deciding a school meets quality standards.**

- **2226 Application Under 2226.3** “A description of the school enrollment including a statement of how it is designed to serve children with disabilities.” This statement must indicate that the design of services is consistent with Vermont and federal special education regulations and Act 173 core purposes.
- **2227 Approval. Clarification of the statement** “..., that the school provides a minimum course of study pursuant to 16 VSA, ... and that it substantially complies with the Board’s rules for approved independent schools.” An operational definition of “minimum” and “substantially” is needed.
- **2227.5.1 The absence of the licensure needs to be addressed when describing teachers who are providing special education services.** This is not a field where “substantially equivalent time in training and experience in their field of instruction” is sufficient unless recognized through a formalized peer review process.
- **2229.3 Assurances. Demonstration of “understanding” also requires an operational definition. Demonstration of compliance with special education law and regulations both federally and in Vermont would be a recommended standard.**
- **2229.4 Procedures for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School. Under (a)(1), clarification of the “...and the student meets the other requirements of the school’s enrollment policies.” Clarification of what this encompasses is needed; as enrollment policies vary.** In addition, some of the current enrollment practices used by some independent schools have been demonstrated to select against students with learning differences. Allowing schools to set enrollment practices that likely reduce enrollment by students with disabilities appears to conflict with the inclusive intent of Act 173.
- **2223.1 Written Agreements Required. Detailed and transparent accounting consistent with Generally Accepted Accounting Principles is necessary.**
- **2233 Standards and Regulations. The responsibilities the LEA is given by federal and Vermont law and regulation make it important that the SBE provide the opportunity for LEA representation to “participate in the development and revision of state standards that apply to independent schools.”**
- **Private Kindergarten Approval Section 2292 Criteria for Approval.**
(c)(5) Identifying developmental delays in young children, and implementation of programs to address these needs consistent with Early Childhood Special Education requirements in Vermont law and regulation.
- **The vital importance of establishing Agency of Education capacity in implementing and overseeing meaningful oversight and collaboration with independent schools and their LEA partners cannot be overstated.**

Thank you for the opportunity to comment.

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