

MEMORANDUM

TO: State Board of Education Members
FROM: Agency of Education
SUBJECT: Questions Regarding Independent School Approval
DATE: November 15, 2024

Following the September State Board of Education meeting, the Agency of Education shared materials relating to the review process for approved independent schools at the request of board members. This document contains the resulting follow-up questions from individual board members and answers from the Agency. Several supporting documents are referenced in the questions and answers. They are posted to the Agency's [web page for the November State Board meeting](#).

Prior discussions at monthly State Board meetings and the follow-up questions below indicate that State Board members continue to have discomfort around three issues: special education in approved independent schools, nondiscrimination protections, and costs of approved independent schools. We offer the following to further the dialogue, give assurances around next steps, and share areas where rules and practice are being improved to support districts and approved schools.

Special Education

The Individuals with Disabilities Education Act (IDEA) places the responsibility to ensure each eligible student receives the necessary services on the local education agency (LEA), which in Vermont means the supervisory union. Because the LEA may not delegate this fundamental responsibility, in supervisory unions that include tuition-paying districts, it must rely on participation and cooperation from approved independent schools where resident students attend. The minimum requirements for approved independent school actions are listed in Rule 2200. These actions might fairly be described as best efforts; the rule acknowledges that there will be circumstances when the approved independent school is relieved of providing a service itself, and instead the LEA will fill the gap with either its own employees or contracted services. There is inherent tension in Rule 2200's requirements for provision of special education in independent schools. Successful implementation of the rules depends on coordination on a student-by-student basis.

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.

Protections Against Discrimination

It is important to acknowledge that Vermont's policy options are constrained in two ways. First, we have a historical tuition system that includes private entities that receive public education funds. Second, the United States Supreme Court has ruled that when private entities are included in public funding programs, the State may not exclude religious entities from participation in the program or infringe on those entities' First Amendment rights to practice their religion within the parameters of the program.

Within these constraints, Rule Series 2200 outlines two important methods of ensuring that any school approved to accept public tuition complies with Vermont nondiscrimination laws. Approved independent schools must, as a condition of approval, adopt and abide by a nondiscrimination statement. The Agency confirms adoption of the statement in the approved independent school application. Independent schools approved for public tuition must also adopt the policy outlined in Rule 2229.1 which requires a student must be accepted for enrollment without regard to the student's membership in a protected class, the student's actual or suspected disability or socioeconomic status. The policy must also state any special requirements for enrollment but may not use any of the foregoing classifications as a basis for enrollment decisions. Only after the student is accepted for enrollment may the approved independent school collect information about student special education needs, to facilitate the matching of student need to service delivery under Rule 2229.4 procedures. The Agency receives an upload of a school's adopted policy in the approved independent school application. A policy must include all elements outlined in rule for the school to pass this compliance check. The Agency is also reviewing a model policy prepared by the Vermont Independent Schools Association that will meet these requirements. Any school adopting the model policy will be deemed to satisfy Rule 2229.1. Other policies will be reviewed by AOE legal counsel on a case-by-case basis.

Costs at Approved Independent Schools

The costs of special education at approved independent schools are governed by two sets of rules, and depend on the type of school. Private approved therapeutic schools serve students from tuition paying as well as operating school districts. For these placements, sending SUs pay a tuition rate that may not exceed the rate approved by the Agency under Rule 2232. You can find current approved tuition rates in [this report](#). We note that many supervisory unions have begun to explore opening their own therapeutic programs for resident students and non-resident students who may be placed by other SUs, as well as SUs that are interested in collaborating to establish collaborative programs.

Other approved independent schools are paid by school districts at the statutory tuition amount for each student, plus any excess costs of providing special education that are above and beyond general education services. Statute dictates that supervisory unions and approved

independent schools must enter into written agreements that define what services will be included in excess costs and what rates will be charged. The Agency agrees with the concerns expressed by many supervisory unions that more guidance should be issued from the Agency to inform this contracting process. This work is in progress, and when completed should improve predictability, transparency and accountability for both SUs and approved independent schools.

State Auditor Follow-Up

We also want to share with board members that last week, the Agency responded to a planned follow-up on the recommendations in the 2021 audit report by the Vermont State Auditor entitled *K-12 Schools: More Students Attending Vermont Approved Independent [Private] Schools and Fewer Attending Out-of-State Schools at Public Expense*. In the response, we shared that the Agency is currently experiencing a backlog of independent school approvals which has resulted from a combination of factors including 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. Our response reiterated the anticipated plan previously shared with the State Board to restart the regular cycle of reapprovals. Schools that we believe will have no barriers to reapproval will begin to be submitted to the State Board in April and May of 2025. This includes up to 13 schools that have received an onsite review visit by AOE in the last year, (Category 1) plus 23 schools that are jointly accredited by a recognized accrediting agency and the AOE (Category 3). Other schools (Category 2) that require an onsite review visit will begin to be submitted to the State Board of Education subcommittee in June 2025.

Follow Up Questions

Q1: A request for an updated approval list with the dates of approval, renewal and term dates of those approvals.

A1: See "IS by Categories"

Q2: Provide the amount of public tuition paid to each independent school that received public tuition from July 1, 2023 to June 30, 2024.

A2: See "SBE FY23 Tuition to Independent Schools"

Q3: Where would we find the "Agency of Ed Technical Manual for Special Ed Cost Accounting" to better understand the excess special education costs?

A3: The Technical Manual for Special Ed Cost Accounting document has been sunset and replaced with two technical manuals, the [Technical Manual for Use and Accounting of IDEA Part B Entitlement Grants](#) and the [Technical Manual for Documenting Maintenance of Effort](#).

Q4: Is there a consequence to falsely attesting to the Assurances, as it relates to nondiscrimination/public accommodations, or frankly any other assurance?

A4: Yes. An individual who intentionally and with the intent to defraud makes a false claim to the Agency as to a material fact is guilty of a crime under the False Claims Act. 13 V.S.A. 3016.

Q5: We are all aware of the nondiscriminatory practices of schools refusing to play in sporting events against schools with transgender players. How can we believe an "assurance" of nondiscrimination by those schools?

A5: Assurances provided to the Agency of Education must be truthful. The AOE is careful in determining the wording of assurances, who is qualified and required to provide the assurance, and in monitoring practice against assurances provided. Assurances are used by AOE in accordance with SBE rules.

Q6: Why are therapeutic schools exempt from this round of compliance monitoring?

A6: We believe this question refers to the ISTA process, which was a one-time check of compliance with elements of Rule 2229. The elements of the rule that AOE was most concerned with monitoring, because they were newly enacted requirements, stated that therapeutic schools are exempt from the rules. See rules 2229.1(d), 2229.4(i). Rule 2229 (2229.3) applies to therapeutic schools and these same requirements have been required for therapeutic school approval (formerly "special education approval") for many years.

Q7: Of the 79 schools currently approved to receive public tuition, there are 63 up for renewal, some since 2020. - Has the AOE failed to notify them of their upcoming renewal? Why are there 29 schools up for renewal who have not submitted their application in a timely fashion? - Shouldn't that deem them to be out of compliance and thus no longer approved?

A7: The new approval/renewal application has been developed but has not yet been published to the AOE website. The agency has not yet made the application available, so schools through no fault of their own were not able to submit a timely application. Once the application is finalized, it will be uploaded and available on our website and all schools will be contacted to initiate the renewal process. We are making the application available quickly. It will also be accompanied by a recommended model policy on enrollment, which we believe will assist schools and the AOE in the review of that policy, which is a new aspect of the application.

Q8: How are there 18 schools who have not completed the ISTA, which was marked to have been due March 18, 2024, and those appear to be just among those who are up for renewal.

A8: This appears to be a misunderstanding about which schools were required to complete ISTA. The schools indicated by this question are all therapeutic schools and were exempt from ISTA. See A6.

Q9: Will the Expeditionary School be in the Category 1 list of reviews in April/May 2025 as outlined in the report from the AOE or should they be reviewed now?

A9: The Expeditionary School is in Category 2.

Q10: By providing the two options, the assurance equates the qualifications held by a licensed special educator with a staff member that has completed the required module series. However, as written, the form does not collect other information about the staff member's qualifications who complete this module. This raises several questions: Does this mean that an independent school could meet the assurance requirements by having a staff member without other teaching credentials, including a bachelor's degree and/or teaching certification, complete the module?

A10: No, all alternative pathways toward a license in special education require the person to already have a bachelor's degree. The modules help ensure that someone *on staff* at the independent school has basic of understanding of the rules and principles of IDEA in the event that the school chooses to meet other special education requirements through contracting. Meeting this assurance does not, on its own, alleviate the responsibility of providing a licensed special educator to fulfill the requirements of individual IEPs. The school is also required to provide or arrange for all services as described in a particular student's IEP, including services that specify delivery by a licensed professional, which is often, but not always, the case.

Q11: If so, please explain how AOE determined that this option meets the requirements under Rule 2229.2 that an independent school approved for public tuition (and therapeutic schools) meets the requirements of Rule 2229.2 (employing or contracting with staff who have the required licensure to provide special education services) and Rule 2229.3(c) (employing or contracting with staff who have the required licensure to provide special education services).

A11: Rule 2229.3(c) requires either employing or contracting with staff who have the required licensure to provide special education services. Given it allows for contracting, the rule does not ensure that someone *on staff* has background in IDEA to engage in systemic planning conversations or enrollment decisions. Therefore, the additional requirement for the module is also necessary in AOE's judgement. See A10.

Q12: In the previous application, the independent school was required to specify the staff member who meet the requirements. With the new form, how will the AOE use other information in the Standard IS Application to verify that independent schools have staff that meet the requirements by Rule 2229.2 and 2229.3(c)? For instance, will independent schools be required to identify which individual(s) meet the staffing assurances required for 2229.2-2229.3, as indicated on page 22 of the application?

A12: During the application process the independent school is required to submit a staffing list. We also require that independent schools who are using contracting to fulfill their requirements to submit evidence of that contracting and documents providing evidence of the module training if they are utilizing that option. These documents are examined in the course of onsite visits. Additionally, we use the school approval/reapproval process to interview and observe staff members and we have a comprehensive list of what we are looking / asking for. We follow up with interviews of other staff members and review a variety of documents to validate what the interviews/observations.

Q13: AOE breaks down its backlog of reapprovals into stage of review to include three categories: Category 1, schools that received an onsite visit (13); Category 2, schools that require an onsite visit (27); Category 3, schools that are accredited and received a desk review, but will not receive a site visit unless concerns are identified in the desk review that cannot be rectified by way of technical assistance. For schools in Category 3, what is AOE's criteria for determining whether a school receives a site visit or technical assistance?

A13: The default position is that the accredited schools (Category 3) will receive a desk review. See A14.

Q14: How does AOE define “technical assistance” for this group of schools? Under what conditions would AOE determine that technical assistance has failed and either a site visit is required, or the school should not be approved?

A14: Technical assistance consists of providing the resources and materials necessary for the schools to adequately address all SBE rules and operate successfully. In a majority of scenarios, the school has misunderstood what is being requested in the application or has provided incomplete information. Thus, results of a school’s desk review will determine next steps. If areas of deficit are identified through the desk review, the team’s first step will be to mitigate those deficits through targeted technical assistance. If we’re not able to mitigate, or if the deficits would place student safety at risk, then we will conduct an onsite visit.

Q15: What areas of the Rules were those schools placed in monitoring? Specifically, how will the AOE consider elements of a school’s application processes (open enrollment) and provision of services in making this determination?

A15: The AOE does not make the determination as to what type of independent school the applicant is seeking. The school makes that determination. The application form allows for the school to self-identify what they want to apply for. The AOE then reviews accordingly. If the school’s application does not meet the requirement for that type of approval, we provide technical assistance. Elements of a school’s renewal application are aligned with Rule Series 2200. It includes an upload of the school’s required enrollment policy, whether or not the school is also accredited. The AOE will review the policy to ensure it includes the protections required by the rule.

Q16: What is the process of handing reapprovals for schools that are not accredited by NEASC or NNEC?

A16: The AOE follows SBE Rule renewal/approvals specifically outlined in Series 2200, Rule 2223.3 which outlines the process.

Q17: For instance, Rule 2227 provides certain efficiencies to schools that are accredited by a “recognized accrediting agency,” but does not specify NEASC or NNEC. Likewise, it is unclear whether the three categories cover the possible universe of schools – i.e., schools that did not receive or require a site visit, but that are not NEAC or NNEC accredited.

A17: In the spreadsheet provided, “IS by Categories”, column D is for accredited status. Of the 63 currently on this list the accreditors are NEASC and NNEC. The AOE has not conducted a site review for those that have already occurred and does not plan on conducting site reviews (see above) for schools maintaining accreditation through the SBE-recognized accrediting agencies. The application provides a specific track for schools accredited through an SBE-recognized accreditation entity.

Q18: What steps is AOE taking to ensure that independent schools fully implement a student’s IEPs, as required by law?

A18: During the review process for approval/reapproval, we do a representative sampling of student IEPs (and supporting documents) and require concrete documentation of service delivery. We review student and staff schedules, attendance information, and the

school's calendar / master schedule to ensure everything matches up. It's important to note that the AOE does not have a process for ensuring public schools are fully implementing student IEPs, unless/until something comes to our attention through our general supervision and monitoring processes, credible allegations, and/or dispute resolution processes.

Q19: What steps is AOE taking to support LEAs in ensuring that independent schools provide special education and related services in a cost-effective manner?

A19: We note that the tuition and excess costs requirements differ greatly between general education independent schools and therapeutic independent schools. For therapeutic independent schools, the AOE conducts rate setting according to SBE Rule 2232. For general education independent schools, recall that supervisory unions pay the excess costs of special education for individual students, and these costs must be established in the contract between the two entities. To support this contracting work, the AOE is in the process of producing a summary/comparison of individual special education services costs, including regional differences. We believe this reference information will help ensure that excess costs charged to supervisory unions are competitive and reasonable.

Q20: The Agency was charged with creating a model contract - at least model tuition costs - for special education services, so that LEAs would have some way of evaluating the excess special education costs they are charged. Has this been completed? If so, can the AOE share this document with the State Board? If not, what is the AOE's plan and timeline for completing this work?

A20: See answer 19. The vacancies in the finance division have impacted the timeline for this work. The AOE views this document as important and necessary for the field and regrets the delay. Recently, the AOE hosted a work group meeting with special education directors and business managers to seek their input on this work. We were encouraged by the discussion and have planned the release of several guidance documents as a direct result of the collaboration.