

AOE Suggestions for Further Amendment to Draft Rule 2200

Background

After these draft rules were pre-filed with ICAR, several items of further rule development were jointly identified by members of the State Board Subcommittee on Rule Series 2200 and Agency of Education staff. In each instance, the Agency believes that the proposed amendment is noncontroversial. In addition, all of the following proposals have been reviewed in at least one publicly warned meeting. The Agency is presenting the language which appears below during the public hearings on draft rule 2200 so that the public can receive notice of these proposals and the language can be vetted through the rest of the APA rulemaking process. Anyone with questions about these proposals or suggestions for alternate language can contact Emily Simmons, AOE General Counsel at emily.simmons@vermont.gov.

Note that when, as here, a section of the draft rule is under consideration that involves multiple instances of amendment, it can be quite confusing to denote which marked-up text has already been adopted by the State Board at the initiation of the rulemaking process and which marked-up text is part of a new proposal. For this document, the text of the rule is marked-up (i.e. strikethrough of deleted language and underline of new language) as appears in the ICAR filing. Further mark-up that was not part of the ICAR filing is highlighted.

1. Proposals Related to the State Auditor's March 2021 Report

The Auditor's report identified two instances where requirements for approved independent schools were clearly mandated in statute, but were not clearly included as part of the independent school approval process. This proposal would add a reference to the minimum course of study (16 V.S.A. § 906) and a reference to the requirement to conduct background checks for certain hires and contractors.

Section 2227~~6~~ Approval-

The Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to 16 V.S.A. section § 906 of this title and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The board must make the following findings prior to approval:

~~The board may approve an independent school if it finds that:~~

22276.1 The description of the school in the approval application is accurate.

22276.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

22276.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library services, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

22276.4 The school has classroom, laboratory, library and other facilities necessary to operate its program,

22276.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

22276.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

22276.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

22276.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

22276.7 The school employs a sufficient number of professional staff for the population served.

22276.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

22276.9 The school maintains a register of the daily attendance of each of its enrollment.

22276.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving the same grades.

22276.11 The school has the financial capacity to carry out its ~~educational purposes~~ stated objectives for the period of approval. For purposes of these rules, "financial capacity" shall mean anticipated revenue and funds on hand sufficient to meet a school's stated objectives.

2227.12 The school complies with the requirements of 16 V.S.A. §255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry.

2. Proposal Initiated by VHEC to Amend Postsecondary Accreditation Timeline

In 2018, the Vermont Higher Education Council [requested](#) that the State Board address language in the rules for postsecondary certification that may constrain the ability of a new institution to begin operations in Vermont. The current rule requires that an institution must obtain accreditation prior to receiving renewal of its original certificate of degree granting

authority. It is practically impossible for an institution to obtain accreditation in the current timeline. The Agency has identified a solution that would allow up to 10 years for the school to receive its accreditation and then seek renewal from the State Board.

2243.3 Renewal of Certification

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification. Any school seeking renewal, that has obtained initial approval to offer or operate a program of college or professional education for credit or degree, on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the US Department of Education, in order to be considered eligible for renewal by the State Board within the first 10 years of operation.

3. Proposal Related to the Public Accommodations Act

On July 28, 2021, State Board Chair Olsen wrote to Secretary French regarding ways to strengthen alignment between the process of independent school approval and the statutes that apply to approved independent schools. In his letter, Chair Olsen correctly pointed out that Vermont's Public Accommodations Act (PAA) prohibits any school in Vermont from discriminating on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity. 9 V.S.A. § 4500 – 4502. Current Rule 2225.6 states that an independent school must adhere to all lawful requirements relating to facilities in order to be approved, and the PAA is an example of such a requirement. In order to make it clearer that compliance with the lawful requirements relating to facilities includes compliance with the PAA, the Agency suggests the following language.

Section 2226~~5~~ Application.

An application for initial approval or renewal of approval shall contain the following:

2226~~5~~.1 The name and address of the school.

2226~~5~~.2 A statement of the school's philosophy and purpose.

2226~~5~~.3 A description of the school enrollment including a statement of ~~how~~ whether it is designed to serve children ~~with a particular disability or with disabilities generally.~~

2226~~5~~.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

22265.5 A description of the curriculum, methods of instruction, evaluation procedures and special services ~~which~~ that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A., ~~Section~~ § 906.

22265.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable ~~s~~State and federal requirements, including compliance with Vermont's Public Accommodations Act, 9 V.S.A. § 450 - 4506.
