

## Administrative Procedures – Final Proposed Rule Filing

### **Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT  
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

### **Independent School Program Approval**

\_\_\_\_\_/s/ Oliver Olsen\_\_\_\_\_, on 3/15/2022  
(signature) (date)

Printed Name and Title:

Oliver Olsen

Chair

State Board of Education

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

**Independent School Program Approval**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

P-

3. ADOPTING AGENCY:

State Board of Education

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Emily Simmons

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501

Telephone: 802 828 - 1518 Fax: 802 828 - 6430

E-Mail: emily.simmons@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://education.vermont.gov/state-board-councils/state-board/rulemaking>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Judy Cutler

Agency: Education

Mailing Address: 1 National Life Dr., Davis 5, Montpelier, VT 05602-2501

Telephone: 801 828 - 0079 Fax: 802 828 - 6430

E-Mail: judy.cutler@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

16 V.S.A. § 166(b)(8)(C)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Statute provides that financial information provided by an approved independent school in response to the State

Board's requests during a review of financial capacity are exempt from public disclosure if the information was not previously made public.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

16 V.S.A. § 164(14) and Section 22 of Act 173 of 2018 (session law), as amended by Section 8 of Act 112 of 2020 (session law).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

16 V.S.A. § 164(7): "The State Board shall . . . adopt rules pursuant to 3 V.S.A. chapter 25 as necessary or appropriate for the execution of its powers and duties and of the powers and duties of all persons under its supervision and control. 16 V.S.A. § 164(14): "Adopt rule for approval of independent schools."

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

Act 173 of 2018 requires the State Board of Education to adopt rules implementing certain changes to the requirements an independent school must satisfy in order to receive public tuition. These changes include enrollment of students who require special education services and provision of special education to publicly funded students. In current law, students who receive special education services may only choose an

independent school that has sought and received approval for the student's specific disability category. Act 173 and these rules implement a system that allows students who receive special education to enroll in any independent school that has been approved for public funding, if the Supervisory Union approves the placement. These rules create procedures for school districts and approved independent schools to ensure students receive special education services in conformity with federal and state law.

**15. EXPLANATION OF WHY THE RULE IS NECESSARY:**

These rules are directly impacted by sections 20, 21 and 22 of Act 173 of 2018. Revisions are necessary to implement the Act as directed by the General Assembly.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

This rulemaking is being done at the specific direction of the General Assembly.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Supervisory Unions (SUs)/School Districts/Supervisory Districts (SDs); State Board of Education; independent schools; school staff; parents; students; advocacy groups; and the Agency of Education (AOE).

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

This rule effectuates the changes to the independent school approval standards directed by Act 173, which may have significant impacts on SUs/School Districts/SDs and independent schools. One example of a likely financial impact, detailed in the economic impact analysis, is a proposed requirement that schools with a boarding / residential program be accredited by an accreditation agency recognized by the SBE. Additionally, independent schools and SUs/School Districts/SDs may see increased costs due to providing special education services to all eligible children who attend approved independent schools through public tuition payment.

**19. A HEARING WAS HELD.**

**20. HEARING INFORMATION**

Final Proposed Coversheet

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 8/26/2021

Time: 12:00 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5<sup>th</sup> Floor

Montpelier, VT

Zip Code: 05620-2501

Date: 9/15/2021

Time: 04:00 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code: 05620-2501

Date: 10/20/2021

Time: 04:30 PM

Street Address: The hearing will be held virtually. A staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code:

Date: 10/26/2021

Time: 07:00 PM

Final Proposed Coversheet

Street Address: The hearing will be held virtually. A  
staffed physical location will be provided at:

Agency of Education

1 National Life Dr.

Davis 5, 5th Floor

Montpelier, VT

Zip Code: 05620-2501

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

11/5/2021

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE  
SEARCHABILITY OF THE RULE NOTICE ONLINE).

Act 173

Independent Schools

IDEA

Special education

Tuition

## Administrative Procedures – Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

**Independent School Program Approval**

2. ADOPTING AGENCY:

State Board of Education

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Independent School Program Approval; March 15, 2017;  
Secretary of State Rule Log #17-006.





# Administrative Procedures – Economic Impact Analysis

## **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

**Independent School Program Approval**

### 2. ADOPTING AGENCY:

State Board of Education

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Supervisory Unions (SUs)/School Districts/Supervisory Districts (SDs); State Board of Education; independent schools; school staff; parents; students; advocacy groups; and the Agency of Education (AOE).

### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

The enabling legislation will have impacts on public education. These impacts are not known with specificity. The impacts will depend in large part upon how independent schools that are currently approved to receive public tuition respond to the new mandates related to special education. Some independent schools may choose to forego public tuition rather than comply with Act 173 requirements. Independent schools that receive public tuition will charge the excess costs of providing special education to each student's district of residence. This could cause school district budgets, and thus tax rates, to increase. However, these rules are tightly aligned to the Act itself.

In one instance, the proposed rule will have a financial impact on certain independent schools. The proposed rule amendment under Section 2227 (updated numbering) includes a requirement that schools with a boarding / residential program be accredited by an accreditation agency recognized by the SBE. This will have a financial impact on any school operating a boarding program that does not already have third-party accreditation, and has the potential to prevent schools from becoming approved if they are unable to obtain accreditation. This was not mandated by Act 173; it is a change proposed by the SBE independent of any mandate dictated by Act 173.

5. *ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

As this rulemaking has been undertaken at the direction of the General Assembly, no alternatives were considered.

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

## Economic Impact Analysis

None.

### 7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

No cost/burden of compliance for small businesses is anticipated.

### 8. COMPARISON:

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

As no alternatives were considered, no comparisons were made.

### 9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

Representatives of organizations representing impacted entities were integrally involved in the development of the proposed rules and the assessment of economic impact has been part of the deliberative process.

# Administrative Procedures – Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

**Independent School Program Approval**

### 2. ADOPTING AGENCY:

State Board of Education

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None.

### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

None.

### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None.

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

None.

### 7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None.

Environmental Impact Analysis

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None .

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

None .

## Administrative Procedures – Public Input

### **Instructions:**

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

**Independent School Program Approval**

2. ADOPTING AGENCY:

State Board of Education

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The SBE and AOE will continue to involve stakeholders to seek input on the rule, post the rule on the AOE website with opportunity for public comment, and hold four (4) public hearings. The public hearings will be advertised through various communication methods including through the AOE's weekly field memo, related professional associations, postings on the AOE website, and announcements at monthly SBE meetings.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The SBE was advised by the AOE and the Census-Based Funding Advisory Group, which is a stakeholder group established by Act 173. Prior to proposing draft rules to the SBE, the AOE worked with the Census-Based Funding Advisory Group and two working groups comprised of representatives from the Census-Based Funding Advisory Group. These working groups met twice per month, and more frequently in some cases from August 2020 until March 2021. During this time, the AOE also engaged other stakeholders via more informal conversations in seeking feedback on proposed rules.

## Public Input

The SBE reviewed the proposed rules at its monthly meetings in February - May, 2021. The SBE provided opportunity for public comment and solicited specific comment from the Census-Based Funding Advisory Group and the Vermont Independent Schools Association at each of these meetings. Finally, the SBE's Rule 2200 Update Committee met several times throughout the past year and actively sought input from stakeholders on proposed rule changes, particularly the one change that was not mandated by Act 173 (requirement that board school programs be accredited). The SBE has worked to develop a proposed rule that has the consensus of the education community prior to pre-filing.

### 5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

State Board of Education

Agency of Education

Census-Based Funding Advisory Group

Council of Independent Schools

Susan Marks - Special education consultant

Vermont Association of School Business Officials

Vermont Council of Special Education Administrators

Vermont Department of Mental Health

Vermont Independent Schools Association

Vermont Legal Aid

Vermont National Education Association

Vermont Principals' Association

Vermont School Boards Association

Vermont Superintendents Association

