



VERMONT
AGENCY OF EDUCATION

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MEMORANDUM

TO: Heads of School
FROM: Rebecca Holcombe, Secretary of Education *RH*
COPY: Stephan Morse, Chair, State Board of Education; Julie Hansen, Chair, CIS;
Mill Moore, Executive Director, VISA
SUBJECT: State Board of Education Action, May 2015
DATE: July 9, 2015

We hope you are all enjoying summer before gearing up for the next school year.

I am writing to update you on a recent action taken by the State Board of Education related to the process for independent schools seeking approved status. At its May 19, 2015 meeting, the Board clarified how the Agency of Education should be applying Rule 2225.9 (financial capacity rule) as part of our process for reviewing applications for independent school approval. The action items the Board voted on (Items L and L-1) are attached to this memorandum.

There were two goals behind this action. The Board's goal in taking this action was to provide clarity around how the Agency should evaluate evidence of financial capacity of applicant schools. And, the Board also clarified how the Agency should process applications from applicants who have attained accreditation from accrediting entities such as NEASC, with the intent of streamlining that process and reducing the burden of compliance for accredited entities. Our hope is that these changes will simplify the application process and make it easier to quickly review applications, while still meeting the need for public assurance.

I will address each in turn:

1. Approved School Applicants Accredited by NEASC

Schools that are approved by NEASC have committed extensive time and resources to a third party assessment of their quality and sustainability. The State Board recognizes certain accrediting entities in its own rules, including NEASC. At its May 2015 meeting, the Board clarified that the Agency can defer to the accreditation process engaged by an entity such as NEASC, and not engage in duplicative review processes. The benefit of this to Independent Schools is that the AOE will recognize NEASC accreditation in lieu of an Agency-executed site review, so the school does not need to host a second field visit. While the Agency will still need to verify certain practices mandated by state law, which are not covered through a NEASC review, for

all intents and purposes, the Agency will favorably recommend a NEASC accredited applicant to the Board for approved status, for a term that tracks the NEASC approval period, for up to the Board's five year maximum approval period.

2. Approved School Applicants not Accredited by an Accrediting Entity Recognized by the State Board

The financial capacity rule (Rule 2225.9) contemplates that applicants may submit up to four different types of evidence of financial capacity. The purpose of this assurance is to ensure that schools serving publicly funded students have adequate resources to support students without disruption. In recent years, a couple of institutions closed abruptly in Vermont due to financial pressures, which underscores the importance of some public assurance as to fiscal viability. The options available to an applicant school include:

- a) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;
- b) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;
- c) An audit from the present or prior fiscal year performed by a certified accounting firm; or
- d) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity.

A NEASC review addresses this issue quite thoroughly. However, in the case of schools that do not have accreditation from an entity such as NEASC or the like, there are really three potential options as set forth above: (i) an audit letter, (ii) notarized letter summarizing financial status, or (iii) a present or prior fiscal year audit.

In some instances, applicants submit a notarized letter summarizing the financial status of the school, signed by school's board of directors. When this option is selected, applicants typically attach supporting documentation, such as a balance sheet, profit and loss statement, etc. in support of the assurance of good fiscal health.

There are times, however, when applicants submit just a notarized letter, without any additional information. This is the type of situation that the State Board has clarified through its recent action. The Board has clarified that the AOE may, at its discretion, exercise the option of asking an applicant to supplement the notarized letter with additional information, such as an audit letter or an audit, if the AOE determines this is necessary to complete a review of an application for initial approval or renewal. In these cases, the AOE is happy to work with applicants to identify appropriate

supplemental information, in order to meet the need for public assurance with as small a burden as possible on the applicant.

We have had productive exchanges with several applicants that were recommended for approval by the Board at its June 2015 meeting. By working with these applicants we learned, for example, that one of the applicants had completed a rigorous accreditation process already, and another applicant had all but formally completed a similar accreditation review by a recognized accrediting entity. That was the extent of the information that we needed to complete our internal application review, prior to forwarding a final recommendation to the State Board. In another case, an applicant that had already completed an audit process, unrelated to the Agency's application process, shared a copy of fiscal year audit findings with the Agency.

In all of these cases, the AOE was able to recommend these institutions for approval by the State Board with far greater confidence than would have been otherwise possible.

In addition, as some of you already know, we are in a period of transition right now at the AOE. John Fischer, our Deputy Secretary who oversaw the AOE's independent school review process, has left the Agency. While we search for a replacement, John's duties have been temporarily assigned to others.

As an interim measure, the Agency's General Counsel, Gregory Glennon, has taken over the independent school work from John. Greg is doing this work in a "non-legal," programmatic capacity. We are working to fill John's position and map out a long term strategy for oversight and management of independent school application reviews. While we engage this process, we appreciate your patience and understanding.

We remain committed to maintaining progress and momentum in completing application reviews and getting applicants before the Board for a final vote on processed applications. You may have noticed that our list of schools on the June agenda was robust. We expect the same for upcoming Board meetings in August and September. And, in the next few weeks, we will be rolling out new online application forms that will dramatically streamline the application process. We have already shared previous draft applications with you in the past year, and are close to finalizing these forms. We hope that you will find that the opportunity to apply online is an improvement on our dated, "paper heavy" process.

If you have any follow-up questions, please contact the Agency of Education Legal Division, Gregory J. Glennon, General Counsel at 802-479-1756.

AGENCY OF EDUCATION
Barre, Vermont

TEAM: Legal Division

ACTION ITEM: Will the State Board of Education review and clarify its policy preference regarding the Agency's administration of State Board Rule 2225.9?

RECOMMENDED ACTION: That the State Board of Education review and clarify its policy preference regarding the Agency's administration of State Board Rule 2225.9.

STATUTORY AUTHORITY: 16 V.S.A. § 166

BACKGROUND INFORMATION: The Agency is seeking clarification from the Board that the Agency's administration of the Board's rule (Rule 2225.9) regarding financial capacity of independent school applicants for initial approval and renewal is consistent with the policy intent of Board. See Attachment A for additional details.

POLICY IMPLICATIONS: Ensuring alignment between the policy intent and administration of SBE Rule 2225.9.

COST IMPLICATIONS (i.e., Monetary Resources; Staff Resources): N/A

STAFF AVAILABLE: Gregory Glennon, General Counsel

ATTACHMENT A

I. BACKGROUND

On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds (i) that the school provides a minimum course of study pursuant to Sec. 906 of Title 16, and (ii) that it substantially complies with the Board's rules for approved independent schools.

The Board's rules require, at a minimum, that the school has the resources to meet its stated objectives, including (a) financial capacity, (b) faculty who are qualified by training and experience in the areas in which they are assigned, and (c) physical facilities and special services that are in alignment with any applicable state or federal law.

II. ISSUE

The Agency is seeking clarification from the Board on how to apply the Board's rules regarding financial capacity of independent school applicants for initial approval, and renewal, consistent with the intent of Board. The financial capacity rule (Rule 2225.9) states as follows:

2225.9 Evidence of financial capacity may be shown by one of the following:

- (1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;
- (2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;
- (3) An audit from the present or prior fiscal year performed by a certified accounting firm; or
- (4) A statement of financial capacity of a private, state, or regional agency recognized by the state board for accrediting purposes concerning the school's financial capacity.

III. PRESENT UNDERSTANDINGS

NEASC Approved Schools

The Agency generally recognizes a statement of financial capacity of an accrediting entity, such as the New England Association of Schools and Colleges (the most common example for Vermont's approved independent schools), as satisfactory evidence of financial capacity. Typically, the Agency relies upon NEASC's findings when recommending that the

Board take favorable action on an independent school application. NEASC engages a robust review process across all areas (curriculum, facilities, financial capacity) that, arguably, exceeds the Board's requirements for independent school approval.

NEASC approval is for up to 10 years. For those schools that receive a decennial NEASC approval, there are check-ins (Interim Evaluation Reports) at the 2-year and 5-year marks to ensure that the school continues to meet requirements for continued NEASC approval. Sometimes these schools receive a "clean bill of health" at the 5 year study. Other times, NEASC may identify one or more areas of concerns (financial or otherwise) that must be addressed within a certain timeframe, during the remaining course of NEASC's 10 year approval cycle.

The State Board's approval cycle is up to 2 years for first-time applicants, and up to 5 years for renewals. The Agency expects that it will continue to recommend candidates for approval with NEASC approval for a concurrent period, up to the 5 years (maximum) under the rules of the State Board for renewals, and up to two years for any first-time applicant that happens to already be NEASC approved.

Schools Not Approved by NEASC

For those schools not approved by NEASC, the Agency must gather and evaluate evidence of financial capacity. We are not able to rely upon the financial capacity conclusions of an entity like NEASC. This gives rise to the issue of how the Board would like the Agency to interpret Rule 2225.9, in evaluating the financial capacity of an applicant, prior to making a recommendation (to the Board) about the applicant's suitability for approval. The Agency's understanding of Rule 2225.9 is that one or more of the items identified in the rule may serve as satisfactory evidence of financial capacity. In some cases, just one of the four items may be sufficient; in other cases it may be necessary for an applicant to provide more evidence than just one of the 4 evidentiary items. If the Agency determines that it needs to be able to weigh additional evidence in order to adequately review an application, then the Agency reserves the right to request additional evidence, within the parameters of the rule. This could happen, for example, if a notarized letter summarizing the school's financial status (signed by the board of directors or governing body) is the only evidence of financial capacity submitted by the applicant. In some cases, this may not prove to be sufficient evidence of financial capacity. In that event, the Agency may follow up with the applicant and seek an audit letter from a certified accounting firm or a copy of a present or prior fiscal year audit performed by a certified accounting firm. The Agency's goal is to engage a robust process that provides the State Board with the best information possible, about the fiscal health of an independent school that receives (or is applying for eligibility to receive) public tuition funds.

IV. QUESTION FOR THE STATE BOARD

Does the Board support and endorse the Agency's interpretation of Rule 2225.9 as set forth above?