



To: Vermont State Board of Education (SBE)

From: Vermont Independent Schools Association Executive Committee

Date: December 5, 2023

RE: Comment on Rule Series 2200 Draft Updates

Thank you for providing members of the public with the opportunity to comment on the draft updates to SBE Rule Series 2200. We are submitting this written comment on behalf of the Vermont Independent Schools Association (VISA).

We appreciate your diligent and thoughtful approach to these updates and are very supportive of the reorganization of the rules, which makes them easier to navigate. We have summarized our general comments, along with specific suggestions for further refinements to consider as you move forward with this rulemaking.

Our comments (including suggested changes) on proposed amendments to Rule Series 2200 are outlined below and correspond to the Clean Text copy of the proposed amendments, dated August 23, 2023¹.

Act 1 Recommendations & EQS

At the onset, we need to be very clear that **VISA supports the goals of Act 1 and the ethnic and social equity recommendations of the Act 1 Working Group**. It is unfortunate that some individuals and organizations continue to mischaracterize our position on this important work. It is equally frustrating that these individuals and organizations are trying to advance their own political objectives - which have nothing to do with ethnic and social equity studies - under the guise of Act 1.

We support the SBE's approach to apply a common set of ethnic and social equity principles to both the Education Quality Standards (EQS) and the Independent School Approval Rules (Rule Series 2000 and 2200, respectively). More specifically, **VISA supports the application of these ethnic and social equity principles to SBE Rule Series 2200**.

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<https://education.vermont.gov/sites/aoe/files/documents/sbe-rule-2200-independent-school-program-approval-clean-text2-10-09-2023.pdf>

These principles are consistent with the core values shared by VISA and our member schools, which embrace and promote diversity, equity, inclusion and belonging within their schools, with practices, pedagogies, and curricula that are culturally responsive, anti-racist, and affirming of individual identities. The reality is that our member schools have been at the forefront of this work. Our independence has allowed us to quickly and flexibly adapt to the needs of the students we serve - which often outpaces the speed of regulatory change. Many of the students in our schools come from the very groups that Act 1 speaks to. All too often, these students have come to our schools from environments that were unwelcoming.

We agree with the SBE's conclusion that the unilateral application of the entire EQS rule series to approved independent schools is inconsistent with the statutory framework that governs independent and public schools. This statutory framework acknowledges different governance, accountability, and financial structures and provides specific direction to guide the SBE's rulemaking powers for the two regulated environments that operate within this framework. The very first section of 16 V.S.A. § 165, the statute that governs EQS, explicitly states that "*each Vermont public school... shall meet the following education quality standards...*" (our emphasis).² A different statute³ authorizes the SBE to promulgate rules governing the approval of *independent schools*, while another statute⁴ imposes a duty upon the SBE to grant, suspend, revoke, and renew approvals of *independent schools*, consistent with the SBE's *independent school* approval rules.

The distinctions between these two statutory constructs can be illustrated when examined through a different perspective. As an example, consider the implications of a proposal requiring all public schools to comply with Rule Series 2200 (the independent school approval rules) in their entirety. A rational evaluation of such a proposal would rightly conclude that this would be an inappropriate and unlawful exercise of the SBE's authority, since Rule Series 2200 is designed to give effect to a statutory duty the SBE has to grant (or deny) approval of independent schools. While the SBE has a statutory duty to grant (or deny) approval of an independent school at least every five years, it does not have similar authority to approve public schools.

The universal and unilateral application of EQS to approved independent schools would result in significant structural changes that are not only unrelated to the goals of Act 1, but as noted above, would be impermissible under Vermont's statutory framework. More fundamentally though, many of the EQS rules (unrelated to Act 1) just don't make sense in an independent school context.

EQS is designed for an education system that is wholly contained and managed by a superintendent. For example, EQS rules specify that schools must follow a curriculum developed by the supervisory union⁵ and that heads of school be supervised by the

² 16 V.S.A. § 165(a)

³ 16 V.S.A. § 164(14)

⁴ 16 V.S.A. § 166

⁵ Proposed EQS Rule 2120.6

superintendent⁶. As a practical matter, this would be unworkable, since most independent schools serve students from large (mostly rural) geographic catchment areas spanning multiple supervisory unions. Several of our member schools serve students from four or more supervisory unions. How would an independent school be expected to comply with EQS when it is expected to deliver four (or more) separate (potentially conflicting) curricula? How can the head of an independent school be supervised by four (or more) superintendents, when he or she is actually employed by the independent school's board of trustees?

The requirement that all educators hold a professional license is another challenge that EQS would cause for independent schools - one that would be highly disruptive at a time when Vermont is facing an educator workforce shortage. We respect and value the licensure that many Vermont educators have earned. In fact, many professionals at our member schools hold educator licenses. But as we have learned from experience, licensure is not the only indicator of educator quality, and it has the effect of creating a "paper ceiling"⁷⁸. This is particularly true for new Americans and professionals who may have come into education through a non-traditional route (such as a second career).

We want to acknowledge the SBE's stated intent⁹ to harmonize specific sections of Rule Series 2000 (EQS) and Rule Series 2200, namely the statement of purpose and definition of discrimination. We recognize and appreciate that the board is carefully reviewing this language to ensure conformance with applicable statutory law. We are supportive of language in these two sections that can be uniformly applied to both sets of rules and is consistent with legislative intent and underlying statutes.

To reiterate, we support the goals of Act 1 and the ethnic and social equity principles recommended by the Act 1 Working Group. EQS is not the correct rule series to advance this important work forward in the independent school world, but Rule Series 2200 is. We support the SBE's proposed amendments to Rule Series 2200 as the appropriate mechanism to apply these principles to independent schools. We do not support the application of unrelated provisions of EQS to independent schools.

2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities

For consistency of style, we suggest modifying 2223.3.4(j), (k), (l), (m), (n) as follows:

(j) practices that ensure compliance ~~comply~~ with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;

(k) ~~maintain~~ a policy pursuant to 16 V.S.A. §912 regarding a student's right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;

⁶ Proposed EQS Rule 2121.1

⁷ <https://www.newamerica.org/education-policy/policy-papers/teacher-talent-untapped/>

⁸ <https://www.future-ed.org/the-obstacles-to-a-more-diverse-teacher-workforce/>

⁹ [October 12, 2023 Memo from SBE Chair Samuelson](#)

(l) procedures to ensure that provide students have access to menstrual products at no cost pursuant to 16 V.S.A. §1432;

(m) practices that ensure compliance ~~comply~~ with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;

(n) practices that permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;

2223.3.5 Other Required Activities

We suggest modifying 2223.3.5(e) to include the applicable statutory citation, as follows:

(e) comply with legal requirements of 16 V.S.A. § 568 concerning nondiscriminatory school branding;

For consistency of style with the rest of this section, we suggest modifying 2223.3.5(j), as follows:

(j) adopt policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and

2223.4. Annual Compliance Assurance

VISA supports an annual compliance assurance, particularly as it relates to compliance with the SBE's anti-discrimination regulations and related state and federal laws. **Under our bylaws, VISA requires its member schools to adhere to anti-discrimination laws and regulations, without qualification, as a condition of membership in our organization. We oppose state approval or renewal of any school that is unwilling to adhere to anti-discrimination laws and regulations.** We view annual compliance assurance as an important tool to protect students and staff, and safeguard the integrity of our education system.

Our members are eager to demonstrate their steadfast commitment to Vermont's anti-discrimination regulations.

The proposed rule could be enhanced with the following changes:

- Specify that the submission of the annual assurance and associated supporting material will be handled electronically.
- Include a transition provision, which would require the AOE, within 60 days of the rule taking effect, to:
 - develop necessary assurance procedures, systems, and electronic forms
 - deliver online training and documentation to approved independent schools

- establish a deadline, not less than 30 days and not more than 90 days from the date the rule takes effect, for independent schools to submit an initial compliance assurance
- notify all approved independent schools of the compliance assurance requirement and the submission deadline via email and by posting on the AOE website
- Specify that the above initial compliance assurance would apply to the 2023/2024 school year, along with an assurance that the school intends to remain in full compliance for the 2024/2025 school year
- Specify the following deadlines for subsequent years (i.e. following the initial compliance submission during the transition period):
 - January 15th - AOE shall publish compliance assurance form and notify all approved independent schools (via email and posting on AOE website)
 - March 15th - approved independent schools must submit compliance attestation for current school year, along with an assurance that the school intends to remain in full compliance for the following school year
- In the case of any independent school that has failed to submit an acceptable compliance assurance form by the deadline, we recommend:
 - that the AOE notify the school via email AND by certified mail, with return receipt requested, and provide 10 business days - from the date the notification was sent - for the school to come into compliance.
 - that the notification includes a clear and prominently displayed statement that the school may lose its approval status if action is not taken.
- Require the AOE to maintain and regularly update a register of approved independent schools and their compliance assurance status, which shall be a public record.

2224.1.1. Standard Application

We suggest that the following sentence be modified to clarify that information solicited through the application process must be directly related to a requirement under these rules:

“At a minimum, the application shall solicit the information containing or describing the school’s basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies, fiscal practices and evidence of financial capacity, operational information, ~~appropriate~~ assurances or disclosures required under these rules, a request to receive public funds, if applicable, and ~~any~~ other information required under these rules for ~~that~~ the Secretary, Board, or review committee ~~may deem important in considering~~ to determine whether the school meets requirements for approval.”

Section 2227. Recognized Accrediting Agencies

Given the fact that Vermont law prohibits new approvals of independent schools, VISA anticipates that there will be limited demand for new accreditations of independent schools. The two accrediting bodies (NEASC and AISNE) currently recognized by the SBE are well

established and respected for their comprehensive accreditation standards and practices. VISA recommends against the addition of a process and criteria to recognize additional accrediting organizations; we ask that the SBE limit recognition to NEASC, AISNE, and their successors (e.g. in the event of a name change, merger, or acquisition).

With limited demand for additional accreditation options, focusing on the two existing recognized accreditors will maintain confidence in the external accreditation process and eliminate the risk of a less rigorous accreditor becoming recognized. Our member schools and the families they serve place a high value on the quality and familiarity of accreditation provided by the two organizations who are already recognized. We do not want to see this value diminished or diluted in any way.

General Comments Regarding Accountability

We are aware of comments received by the SBE suggesting that the current and proposed independent school approval rules provide insufficient accountability, particularly in the context of publicly funded students. We respectfully disagree with these assertions and would like to point out that there are several areas within the current regulatory framework where approved independent schools are actually held to high standards of accountability (and in some ways, to a higher accountability standard than our public and recognized school peers).

- **State Level Review & Approval by SBE** - all Vermont approved independent schools are subject to review (following a review and recommendation by the AOE) by the SBE at least once every five years through a process designed to ensure compliance with the approval standards and regulations set forth in the rules. This is a transparent and accountable process, conducted in public by the SBE. This process does not apply to public schools or recognized schools.
- **State Level Complaint Process** - Rule Series 2200 provides a formal process that allows for members of the public to submit complaints to the AOE about an approved independent school, which can then trigger an investigation and action up to and including suspension and revocation of an independent school's approval status. Under existing rules, the AOE is required to maintain a register of complaints, which is a public document. Public schools are exempt from this process. There is no similar state-level process mandated in rules that permits members of the public to lodge a complaint about a public school directly with the AOE or SBE.
- **Approved Independent Schools Are Accountable to Local Communities** - The accountability of approved independent schools serving students tuitioned from non-operating public school districts ties directly back to 16 V.S.A. § 821 and 822. Under these statutes, voters have the power to choose whether they want their school district to operate a public school or pay tuition for their students to attend schools not operated by the district. This is a powerful accountability mechanism: if independent schools are not meeting the needs of the local community, the voters have the power to take control and end tuitioning with a simple majority vote of the electorate.

- **Approved Independent Schools Are Accountable to Students & Families -**
Fundamentally, approved independent schools are accountable to the students and families they serve. Students who attend our schools do so by choice. Inevitably there are circumstances where a student and/or family decides that one school better serves the needs of a student than the one he or she attends. This is not uncommon; in fact, our member schools often serve families with siblings attending different independent schools. But when there is a systemic problem with a particular school the impact on enrollment typically yields corrective action before the underlying issue becomes a regulatory compliance issue.
- **Special Education Accountability Through IEP Process -** students attending approved independent schools (including therapeutic schools) on an Individualized Education Plan (IEP) are held accountable to that student's individual needs through the robust IEP process by the IEP team, which includes the local LEA.

Conclusion

We hope you found these comments helpful. We would like to point out that the SBE recently adopted a major revision to Rule Series 2200, the final elements of which just took effect in July of this year. This was a multi-year effort that involved input from multiple stakeholders and other members of the public. Given the recency of those updates, and the magnitude of change that we are still adapting to, we would respectfully request that you reject any last-minute proposals for significant changes during this rulemaking, particularly any proposals that were already considered during the last update to Rule Series 2200.

Our member schools remain committed to working in partnership with the local communities we serve and our peers in the public school system to address the significant needs of students in the areas of literacy, numeracy, homelessness, food insecurity, infrastructure, and mental health, as well as promoting anti-racist, inclusive and welcoming environments.

We appreciate your service to our state and your commitment to Vermont students. Please feel free to contact us if we can be of any assistance as you move forward with your rulemaking process.

Sincerely,

VISA Executive Committee

Tim Newbold, President (Village School of North Bennington)
Jennifer Zaccara, Vice-President (Vermont Academy)
Tamara Mount, Treasurer (Hilltop Montessori School)
Andrew Lane, Secretary (The Sharon Academy)
Drew Gradinger (Kindle Farm School)

Sharon Howell (St. Johnsbury Academy)
Colin Igoe (Long Trail School)
CJ Spirito (Rockpoint School)
Mark Tashjian (Burr and Burton Academy)