February 14, 2017

Mr. Stephan A. Morse, Chairman
Vermont State Board of Education
219 North Main Street, Suite 402
Barre, Vermont 05641

Dear Stephan:

We have reviewed the Discussion Draft of the SBE Proposed Rule 2200 Series dated 1/31/17. We appreciate the work of the stakeholders thus far and efforts by members of the Board to address concerns that have been expressed. The draft contains many positive changes from the perspective of the independent schools' community, and we believe there are several areas where we might achieve consensus with some modification.

In our view, however, there are several changes in the draft that require much greater discussion before moving forward with rule changes, particularly those around special education services. New provisions on open enrollment and discipline, which were not in the Board's initial rules proposal, are unacceptable in their entirety.

We address each provision below and look forward to a continuing dialogue. Given the significance of the impact of these proposals on independent schools, we urge the Board not to advance the rulemaking process without further discussion with independent schools. In addition, a process outside the context of this rulemaking is needed for continued dialogue with independent schools regarding special education services.

2220 Statement of Purpose (p.1 and p.2)

Fiscal Accountability. We request that the last sentence, which reads "*The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format determined by the Secretary, that GAAP procedures be employed, and that independent auditors be periodically employed*," be struck to align and be consistent with the actual language proposed in the discussion draft, found at 2222.1(a)(v) on page 4.

Equal Opportunity and Equity. We request that the first clause of the first sentence, which reads "*As evidenced by current enrollment patterns*," be struck. No evidence or data has been presented to support such an assertion.

2200 Definition (p.2)

In our letter to you dated January 3, 2017 we requested that the definition of "approved independent schools" make accommodation for sectarian schools. Although these schools do not receive public funds, many desire to achieve approval status if they comply with the standards. Religious schools have always been able to achieve approved status if they meet the minimum standards for approval. By their very nature, they cannot receive public funds as a matter of constitutional law. This needs to be addressed. We suggested language in our letter of January 3, 2017. If that is unacceptable, we'd like to discuss possible alternatives.

The definition section now includes a definition of "specialized independent school". We appreciate the recognition that our winter athletics schools and schools that focus their resources on providing certain special education services likely could not meet a number of the proposed approval standards. We request two minor changes to the definition:

"Specialized independent schools" are approved independent schools providing focused, differentiated and specialized instruction to students with behavioral and learning challenges/disabilities in an alternative environment to the public school setting. An independent school with a significant focus on the instruction of focused ~~athletic~~ skills and development of students in an identified ~~sport~~ **activity** may be considered a specialized independent school.

2222.1(a)(i) Tuition from Public Funds (special education p.3) and 2223 Special Education Approval for General Education Schools (p.8)

We are passionate about educating students, and we are willing partners in the effort to ensure that each child is educated in a manner that best suits his or her needs, including those who require special education services. While the new draft attempts to address some of the issues independent schools have raised with respect to provision of special education services, particularly the cost of employing licensed special educators and time and expense of the approval process, we cannot support the revised provisions.

Independent schools would like to engage in a robust and detailed discussion to identify areas where children are having difficulty accessing special education services, with the goal of designing a system of care made up of public and independent schools available to meet their needs.

The proposed rules do not strive to create educational centers of excellence, nor do they acknowledge and embrace alternative and highly effective methods of educating students with special needs outside the standard IEP model at lower cost and with less stigma.

The proposed rules also assume that the only expertise in special education rests within the public-school system. That is simply not true. We have many independent schools that specialize in providing these services, and many general education independent schools that excel in serving students with special needs. Testimony in the Senate Education Committee on February 9, 2017 highlighted the fact that the federal government believes Vermont is under-performing in special education. The Dartmouth College Rockefeller Center has concluded that Vermont's special education system has a number of deficiencies.

This discussion will take time, as it should, if we are truly interested in creating a system that meets the unique needs of our students. We propose that the SBE not advance any changes to the special education requirements of the rules at this time, and engage the independent school community and others in a serious and thoughtful effort to design a system that will improve opportunities and outcomes. We share the goal, but this is not the right direction.

2222.1(a)(ii) Tuition from Public Funds (accreditation p. 3)

The new draft acknowledges the challenges and expense for small schools in achieving accreditation. However, we would like clarity on whether the Board has the authority to require independent schools to support the cost of reviews. If that is so, we would recommend the Secretary establish cost after consultation and consent of the Council of Independent Schools. This would be consistent with the review team approach in which investigations of compliance with approval standards are conducted pursuant to 2222.6 Investigations.

In addition, based on continuing discussions with independent schools, we request the proposed rule be modified as follows to ensure a clear process:

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant to Rule 7320 of the State Board's rules, or is approved through state evaluation methods as available and described in ~~16 VSA §165~~ **following a school visit by the Agency of Education, or a review team of at least three members appointed by the Secretary, including a member of the Council of Independent Schools, or an independent reviewer appointed by the Secretary and Council of Independent Schools, to ensure that the school meets the minimum standards set forth in these rules. The review team or independent reviewer shall submit a written recommendation for approval to the Secretary of Education upon completion of the school visit. In the event the review team or independent reviewer finds that the school does not meet the minimum standards set forth in these rules, the review team or independent reviewer shall provide the school with written notification specifying why the school does not meet such standards within 10 business days following the school visit and prior to submission to the Secretary of Education. The school shall be provided the opportunity to submit a response and/or a compliance plan to the review team or independent reviewer no later than 10 days following receipt of such written notification. The review team or independent reviewer may modify the report based upon the school's response prior to submission of the final report to the school and the Secretary of Education. The school shall have the opportunity to submit a response and/or a compliance plan no later than 10 days following receipt of the final report. The Secretary of Education shall consider the response and may conduct additional review prior to making a final recommendation to the State Board of Education. The State Board of Education shall provide the school with a reasonable opportunity to respond to recommendations of the Secretary of Education before any hearing or decision regarding the school's approval.** ~~The cost of such evaluations shall be paid by the independent school and may include tiered levels based on school size as defined by the Secretary.~~ Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. Such accrediting agencies are listed in Rule 7320.

2222.1 (a)(iii) Tuition from Public Schools (anti-discriminatory enrollment policies p.3)

We accept this provision, but highlight a potential drafting error in the last sentence. The reference to subsection 2222.1(iii) should read 2222.1(a)(i).

2222.1 (a)(iv) Tuition from Public Schools (health and safety p.3)

We accept this provision and appreciate removal of language in this provision that would have required independent schools to comply with all federal and state laws and regulations applicable to public schools.

2222.1 (a)(v) Tuition from Public Schools (financial capacity p.4)

We agree it is important to ensure that our independent schools are financially solvent. The revised proposal generally achieves this goal; however, since our last discussion we have heard from smaller independent schools that will still struggle to demonstrate solvency under this language. In addition, VISA members have consulted with Licensed Certified Public Accountants to determine how financial capacity provisions would be applied in the field. Based on those discussions, we request the following substituted language which will allow for greater flexibility for these schools:

1. (a) For purposes of approval, the school demonstrates financial capacity to operate its school and for a period of five years by submitting to the Secretary of Education one of the following with its application for approval:

(i) A statement of financial capacity by an accrediting agency recognized by the State Board at Rule 7320; or

(ii) A statement of financial capacity or letter by a licensed certified public accountant (LCPA) or licensed certified public accounting firm (LCPA firm),from the present or prior year, describing financial capacity for a period of five years; provided, that the LCPA or LCPA firm examine the school's current or projected budget, most recent federal tax filing associated with the school, value of assets and income which may be available to the school, ongoing expenses of the school, liabilities of the school, status of school enrollment, and stated school objectives; or

(iii) An audit from the present or prior fiscal year performed by a licensed public accounting firm or licensed certified public accountant; or

(iv) The school's Form 990 submitted to the Internal Revenue Service; or

(v) A statement of financial capacity by a peer review team or independent reviewer(s) issued pursuant to 2222.14 (a)(ii)

(b) The State Board of Education may require a school, seeking approval for the first time, to provide the Secretary of Education with evidence of financial capacity consistent with Rule 2222.14 (a) (v) on a periodic basis during the approval period. No school shall be required to provided evidence of financial capacity more than once per 12- month period during a 5-year

approval term.

(c) The State Board of Education may only require a school, seeking re-approval, to periodically within the 5- year approval provide the Secretary of Education with evidence of financial capacity consistent with Rule 2222.14 (a) (v) if the financial capacity statement filed in connection with its application for re-approval provides reasonable cause to believe that the school may lack financial capacity to operate for five years. A school shall not be required to provide evidence of financial capacity more than once within a 12-month period during a 5-year approval term. Reasonable cause arises where the individual(s), firm or entity authoring a letter or statement describing financial capacity, pursuant to Rule 2222.14 (a) (v)1 (a)(i),1(a)(ii),1(a)(iii),and1 (a)(v), recommends that the State Board of Education periodically review the financial capacity of the school, or, the Secretary of Education, having first consulted with the school about the information giving rise to reasonable cause and the impact of more frequently filing evidence of financial capacity pursuant to 1 (a) of this rule, concludes that an annual review of the school's financial capacity is necessary to assist the State Board in determining whether the school has the financial capacity to operate for a full five years . Upon its own motion, upon request of the school or request of the Secretary of Education the State Board of Education shall remove the requirement of more frequent filings of financial capacity if the State Board of Education finds the school has sufficient financial capacity for the remainder of the approval term.

(d) The head of school or equivalent thereof, the chief financial officer or equivalent thereof, and the school administrator charged with the school's finances or budget shall, within 5 business days, report to the Secretary of Education any significant change in finances that they believe will materially and adversely affect the school's ability to pay all the school's expenses for more than 30 days or pay any of the federal or state payroll tax obligations due.

(e) If the Secretary of Education has probable cause to believe that a school lacks financial capacity to operate, the Secretary of Education shall, prior to taking any action or making any recommendation to the State Board of Education, first notify the school in writing describing the reasons for his/her belief and permit the school a reasonable opportunity to respond and demonstrate financial capacity pursuant to 1(a) or 2 of this rule. If the Secretary of Education, after having provided the school a reasonable opportunity to respond and demonstrate financial capacity, does not find that the school has satisfactorily responded or demonstrated financial capacity, the Secretary of Education, with the written consent of the school, may ask the Council of Independent Schools to establish a review team and conduct a school visit to assess a school's financial capacity and submit a report of their findings and recommendations to the Secretary of Education or take any action that is authorized by law or rule that the Secretary of Education deems reasonable and necessary, including requiring the school to periodically submit evidence of financial capacity which shall be not exceed once every 12 months within the approval term.

(f) If the State Board of Education has probable cause to believe that a school lacks financial capacity to operate, the State Board of Education shall, prior to taking any action, first notify the school in writing describing the reasons for his/her belief and permit the school a reasonable opportunity to respond and demonstrate financial capacity pursuant to 1(a) or 2 of this rule. If the State Board of Education, after having provided the school a reasonable opportunity to respond and demonstrate financial capacity, does not find that the school has satisfactorily

responded or demonstrated financial capacity, the State Board of Education, may take any action that is authorized by law or rule that the State Board of Education deems reasonable and necessary, including requiring the school to periodically submit evidence of financial capacity which shall be not exceed once every 12 months within the approval term.

2. Nothing in this section prohibits a school from voluntarily submitting other information related to its financial capacity to the State Board of Education or the Secretary of Education or prohibits the State Board of Education or the Secretary of Education from concluding or recommending that a school has demonstrated financial capacity based upon such a submission.3. Information that a school may elect to provide to a review team, independent reviewer, Agency of Education or the State Board of Education pursuant to this section, that reveals and identifies a school's specific financial information, such as the amount or location of assets on hand, shall be treated as confidential and exempt from public inspection or copying pursuant to 1 V.S.A. § 317 (c)(1), (c)(2) and (c)(9). This subsection shall not apply to a school's Form 990 since it is a federally designated public record and it is not intended to apply to broad conclusions or statements that a school has or does not have the financial capacity to operate.

2222.1 (a)(vi) Tuition from Public Schools (open enrollment p.5-7)

This is an entirely new provision, not contained in the original draft rules proposed. The new draft is a tremendous step backward in this respect from the proposed rules as originally presented. Not only does it interfere with admissions policies, it seeks to control discipline as well. Such policies are integral to a school's culture and climate. We are opposed to the entirety of this provision.

Vermont has a long history of making mission-based education accessible to students. Our independent schools are diverse, just like our students. A diversity of educational options available to serve a diversity of students makes for a healthy educational ecosystem. Mandating open enrollment policies will have a tremendously negative impact on independent schools across Vermont. If schools cannot comply due to misalignment with mission, they will not be able to accept publicly funded students. The resulting impacts on choice are very clear, legitimate and real; student choices will certainly be diminished and in some cases eliminated. We are puzzled by the Board's continued reluctance to acknowledge the consequences of the proposed action. These proposed policy changes are not good for students and families; independent school education will become accessible only to wealthy families that can afford to pay tuition. That cannot be the outcome our state policy seeks to achieve.

Independent schools are already subject to federal and state antidiscrimination laws. Those laws have been restated in ***2222.1 (a)(iii)*** above, and that is certainly acceptable.

2222.1 (a)(vi) Tuition from Public Schools (out of state school p. 7)

We have expressed our concerns about applying Vermont requirements on out-of-state schools, considering implications for other states to prohibit use of tuition dollars in Vermont. This could have a tremendous financial impact on Vermont independent schools that have out-of-state students. At this time, we cannot support this provision with such significant proposed rule changes around special education, enrollment and discipline policies being discussed.

Transition Provisions (p. 21)

These provisions certainly reflect an acknowledgment that many schools will need time to comply with significant changes. However, these time frames are likely far too aggressive for schools to be able to achieve timely compliance with requirements such as accreditation, particularly from a third party entity such as NEASC. Once there is consensus around the scope of the substantive rule changes, there will be a better ability to determine a reasonable compliance time frame.

As educational leaders in our communities, we desire to work with the Board and others to ensure Vermont's educational system is one that provides robust and rigorous opportunities for all students, and demonstrates to the rest of our nation that Vermont is an educational center for excellence. There are areas of this proposal where we can all find common ground in the short term, and there are areas that need much more extensive and meaningful thought and discussion. We look forward to a continued dialogue.

Sincerely,

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Headmaster, Burr & Burton Academy
Chair, Council of Independent Schools

Tom Lovett
Headmaster, St. Johnsbury Academy

CJ Spirito
Headmaster, Rock Point School