



Vermont
Superintendents
Association

To: Stephan Morse, Chair, Vermont State Board of Education
From: Nicole Mace, Vermont School Boards Association
Jo-Anne Unruh, Vermont Council of Special Education Administrators
Jeffrey Francis, Vermont Superintendents Association
Re: Draft Rule 2200 – Open Enrollment and Special Education Provisions
Date: January 3, 2017

This memo provides an overview and context for the attached draft language addressing the open enrollment and special education provisions of Draft Rule 2200. Also attached are two graphic illustrations of the demographics of publicly funded tuition students who attend private versus public schools. These data raise serious questions about whether current admissions practices in private schools allow equal access to publicly-funded students.

We commend the State Board of Education for starting this important conversation about how to ensure equal access to publicly funded education. We look forward to working with the Board and other stakeholders to ensure the rules for independent school approval achieve that goal.

Open Enrollment – The State Board’s November 13, 2015 request to initiate a review of Rule 2200 asks the Agency to provide language that would address concerns regarding equal opportunity and equity. The memo states, “It is the view of the state board that equal opportunities must be available to all in admissions, program availability and discipline, and that the rules explicitly address these issues.”

In our view, the current draft rules do not adequately ensure equal opportunities to all in admissions, and do not address discipline issues at all. The current draft rules simply restate the non-discrimination requirements that independent schools must follow under state and federal law. Missing is a requirement to follow procedural safeguards that ensure equal opportunities are available to all in admissions.

Representatives of the independent schools promote selective enrollment policies so that they can provide “mission-based education.” The belief is that in order for a school to be effective in fulfilling a mission, the school must be able to deny admission to applicants who do not conform to the school’s mission. This approach to admissions

can allow for both conscious prejudice and unconscious biases to shape who is perceived to be a “good fit” for a school. Extensive research into the science of human cognition indicates that even people who consciously reject prejudice and discrimination have biases that can affect their perception and behavior.

The most common procedural safeguard in this context is for admissions to be open and based on a lottery system. Most states in the country that allow public education dollars to go to private schools require those schools to administer a lottery if demand exceeds capacity.¹ In Vermont, public high schools are required to administer a lottery for admissions under the public high school choice law.²

The attached language on open enrollment applies Vermont’s public high school choice procedures *only to independent schools that want to accept publicly-funded students and only for those students who are publicly-funded*. The language also requires due process for suspensions and expulsions of publicly-funded students similar to those provided by public schools.

We believe this language to be consistent with the Board’s stated goal of ensuring equal access in admissions, programs and discipline. This approach does not impose requirements that are more onerous than those applied to charter schools around the country or to Vermont’s public high schools.

The proposed procedures are as follows:

1. The independent school must announce its intent to accept a certain number of publicly-funded students on or before February 1st.³
2. If more than the allowable number of students wish to attend a school, then the school shall devise a nondiscriminatory lottery system for determining which students may attend.
3. The independent school shall notify students of acceptance by April 1.
4. If an accepted student is eligible for special education services, then the IEP team will meet to make a determination regarding whether the independent school can

¹ National Alliance for Public Charter Schools. Available at: <http://www.publiccharters.org/law-database/clear-student-recruitment-enrollment-lottery-procedures/>

² See 16 V.S.A. 822a(d): “If more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school shall devise a nondiscriminatory lottery system for determining which students may transfer.”

³ All dates could be modified to conform to the independent school admissions schedule. These are the dates from 16 VSA 822a, which may not make sense in the independent school context.

provide the services required by the student's IEP. This process is detailed in the Special Education provisions below.

5. An enrolled publicly funded student shall be permitted to remain enrolled in the independent school without renewed applications in subsequent years unless:
 - (a) the student graduates;
 - (b) the student is no longer a resident of the district which pays tuition;
 - (c) an IEP team determines that an independent school is unable to provide the services and supports required by a student's IEP; or
 - (d) the student is expelled from school in accordance with this section.
6. Publicly-funded students will have access to disciplinary due process protections similar to those provided in public schools.

Special Education – The proposed language on special education is designed to address concerns raised by independent schools regarding the financial burden associated with being approved in all 13 categories of special education. The proposed language would replace the current language in Draft Rule 2223. Draft Rules 2223.1 *et seq.* would remain intact, subject to further refinement through the public comment process.

Our proposed language requires that, in order for an independent school to admit publicly funded students, the school must employ or *have access to* a licensed special educator. This could be accomplished by working with a nearby supervisory union/district or with another independent school.

If a publicly-funded student is admitted to an independent school under the open enrollment process described above, and that student is eligible for special education services, the proposed language requires the IEP team to meet with a representative from the independent school to determine what special education and related services the student will need to be successful in the independent school, and update the student's IEP goals and services accordingly.

If the school district of residence determines the independent school lacks approval in the student's specific disability category, the local educational agency (LEA) and the independent school and the Agency of Education shall work together to determine how services and supports can be provided within the independent school until the independent school obtains Agency approval, provided that the independent school

shall obtain approval for an enrolled student's disability category within the school year when the student first enrolled.

We believe this approach maintains the role of the IEP team and the LEA required by state and federal law. It also allows a school district to pay tuition to an independent school, even if the school does not have special education approval in a specific category of disability, so long as the school is able to obtain that approval within a year. If the open enrollment provisions are adhered to, and the IEP retains ultimate decision-making authority with respect to placement and services, we believe this process will ensure equal access to publicly-funded openings for students with disabilities.

We appreciate the opportunity to provide our input into Draft Rule 2200. We anticipate providing more comprehensive feedback once a new draft of the rules is published. Please let us know if you have any questions.

Sincerely,



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