

*[This document reflects changes current through December 1, 2020.]*

## **Rule 2200 INDEPENDENT SCHOOL PROGRAM APPROVAL (2200)**

### **Section 2220 Statement of Purpose.**

The purpose of independent school approval rules is to assure effective, available and equitable educational opportunities for students enrolled in Vermont's independent schools in accordance with state and federal law and aligned with the purposes set forth in Act 173.

### **Section 2221 Statutory Authority.**

16 V.S.A., § 166 and 16 V.S.A., § 2958(e), § 2973.

### **Section 2222 Definitions.**

Agency: means the Vermont Agency of Education.

Approved independent school: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in Rule 2225 (tuition from public funds).

Approved independent school ineligible to receive public funds: means an independent school that meets the requirements in Rule 2227 but does not meet the requirements of rules concerning the delivery of special education services in Rule 2229.

Board: means the Vermont State Board of Education.

Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.

Therapeutic Approved Independent School: means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

Local Education Agency (LEA): as that term is defined in 20 U.S.C. §7801(26), means the supervisory union or supervisory district.

Recognized Independent School: means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school may not receive public tuition.

Secretary: means the Secretary of the Vermont Agency of Education.

Special Education Fees: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

Special Education Services: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings and instruction in physical education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12. Student: means a person age three through age twenty-one.

Student who requires additional support: means a student who meets the criteria defined in 16 V.S.A. §2942(8).

Tuition: means funds paid by a school district to an approved independent school for general education in accordance with Rule 2225.2.

### **Section 2223 Procedure.**

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. An application shall meet the requirements § 2226 below.

Upon receipt of an application for initial approval or renewal of approval, the Secretary shall appoint a review committee of at least two persons.

#### **2223.1 Visit.**

The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities.

#### **2223.2 Report.**

The committee shall present a written recommendation regarding approval to the Secretary. A copy of their recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before a recommendation regarding approval is made by the Secretary to the State Board. The report shall contain the findings of other agencies of state government which inspect such facilities.

#### **2223.3 General Conditions for Approval.**

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be recommended for approval only on the condition that the school meets the requirements of Rule 2229, below. A school meeting approval requirements in 2226 and 2227 but choosing not to enroll students requiring special education services may be recommended for approval but it may not receive public tuition.

#### **2223.4 Review**

The Secretary shall designate a date for action by the Board. Officials of the school shall be notified of this date.

### **2223.5 Renewal.**

Not less than six months prior to expiration of a School's approval, the Secretary shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received. from the school not later than 30 days prior to the scheduled site visit.

### **2223.6 Extension.**

Approval of a school completing timely, application for further approval shall extend until the Board acts on further approval.

### **2223.7 Termination.**

Approval of an independent school which fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

### **2223.8 Denial, Revocation or Suspension of Approval.**

Prior to recommending denial, revocation or suspension of approval the Secretary shall obtain the written recommendation of the Council of Independent Schools. If after receiving the council's recommendation the Secretary determines that denial, revocation or suspension of approval is warranted s/he shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the Board.

- (a) After providing an opportunity for hearing, the Board may revoke, suspend or impose conditions on the approval of an approved independent school for:
  - (1) Failure to demonstrate the school has the resources required to meet its stated objectives;
  - (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools; or
  - (3) Failure to report any of the financial events listed in (b) below.
  - (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).
  
- (b) An approved independent school shall report to the Secretary within five days after its knowledge if any of the following events, unless the failure is de minimus
  - a. The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;
  - b. The School's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
  - c. The school's failure to maintain required retirement contributions;
  - d. The school's use of designated funds for nondesignated purposes;
  - e. The school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;
  - f. The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
  - g. The school's insolvency as defined in 9 V.S.A. §2286(a).

- (c) If the Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. §166(b)(8)(B).
- (d) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:
  - (I) conduct a school visit to assess the school's financial capacity;
  - (II) obtain from the school such financial documentation as the review team requires to perform its assessment; and
  - (III) submit a report of its findings and recommendations to the State Board.
- (e) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.
- (f) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(C) Information provided by an independent school under this section that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. 166(b)(8).

### **2223.8.2 Investigations.**

Reports or complaints to the Secretary concerning matters related to the approval standards shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the Secretary including a member of the Council of Independent Schools. The team will conduct the investigation after initial inquiries and will inform the school of the results. Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the department of Social and Rehabilitation Services. Reports concerning the safety of facilities, water supply, electricity, plumbing or waste disposal systems shall be referred to the department to the appropriate.

### **Section 2224 Reciprocity.**

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 of the Board Manual of Rules and Practices. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Agency by the accrediting agency or the school during the last year of its five-year approval. This interim

report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown the school must undergo the approval process.

## **Section 2225 Tuition from Public Funds.**

### **2225.1 Tuition for Independent Schools in Vermont**

(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Rule 2227 and Rule 2229. Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

(a) There is an order from a court or from a due process hearing pursuant to Rule 2365.1.6 requiring such payment, or

(b) The Secretary has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).

### **2225.2 Tuition for Out of State Schools**

In order for tuition to be paid to an independent school in another state, the school must be accredited or approved by the host state or by an accrediting agency recognized by the State Board. The Board reserves the right to refuse payment of tuition, if after review it determines any such school does not provide the minimum course of study, is unsafe, or does not have faculty qualified by training and experience in the instructional area in which they are assigned.

## **Section 2226 Application.**

An application for initial approval or renewal of approval shall contain the following:

2226.1 The name and address of the school.

2226.2 A statement of the school's philosophy and purpose.

2226.3 A description of the school enrollment including a statement of how it is designed to serve children with disabilities.

2226.4 A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.

2226.5 A description of the curriculum, methods of instruction, evaluation procedures and special services which the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A., Section 906.

2226.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.

2226.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.

2226.8 Statements regarding professional staff including:

2226.8.1 Professional Staff qualifications.

- (1) A job description for each Position or a statement describing training, experience and degree(s) required for each position:
- (2) A resume, vita or description of appropriate qualifications for each current staff member.
- (3) Current assignment of each professional staff member.

2226.8.2 Professional Staff Development.

- (1) A general statement of the institution's expectations for professional growth of staff.
- (2) A statement describing the school's inservice training and financial and other support given to staff for professional development; and (3) A description of professional development in the prior two years.

2226-8.3 Professional Environment.

- (1) A list of staff and length of service.
- (2) A description of staff meetings.
- (3) A description of other staff duties that are not related to teaching or administration duties.

2226.9 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.

2226.10 The school calendar.

2226.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A.,§ 166(b)(3).

**Section 2227 Approval**

The Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with the Board's rules for approved independent schools. The board must make the following findings prior to approval:

2227.1 The description of the school in the approval application is accurate.

2227.2 The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

2227.3 The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including but not limited to library services, administrative services, guidance and counseling services and a system of records by which pupil progress may be assessed.

2227.4 The school has classroom, laboratory, library and other facilities necessary to operate its program,

2227.5 The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

2227.5.1 For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

2227.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

2227.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.

2227.7 The school employs a sufficient number of professional staff for the population served.

2227.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.

2227.9 The school maintains a register of the daily attendance of each of its enrollment.

2227.10 The school maintains an operating schedule that includes a total number of instructional hours each year which is not less than that required of a public school serving the same grades.

2227.11 The school has the financial capacity to carry out its stated objectives for the period of approval. For purposes of these rules, "financial capacity" shall mean anticipated revenue and funds on hand sufficient to meet a school's stated objectives.

### **Section 2228 Length of Approval.**

The board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

### **Section 2229 Approval to Receive Public Tuition, Special Education Approval**

#### **2229.1 Open Enrollment**

In order for an in-state independent school to receive public tuition, it shall enroll any student with an individualized education program who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's IEP team or by the LEA. This requirement shall not apply to an independent school that limits enrollment to students who are on an IEP or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 and who are enrolled pursuant to a written agreement between the LEA and the school.

### **2229.2 Staffing**

An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition.

The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

### **2229.3 Assurances**

The independent school shall demonstrate that it has the ability to serve all students with disabilities by:

- (1) Demonstrating an understanding of special education requirements, including:
  - a. Provision of a free and appropriate public education in accordance with federal and State law;
  - b. Provision of education in the least restrictive environment in accordance with federal and State law;
  - c. Characteristics and educational needs associated with any of the categories of disability of suspected disability under federal and State law; and
  - d. Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.
- (2) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services and appropriately documenting the services and the student's progress;
- (3) Employing or contracting with staff who have the required licensure to provide special education services.
- (4) Agreeing to communicate with the responsible LEA concerning:
  - a. Development of, and any changes to, the IEP;
  - b. Services provided under the IEP and recommendations for a change in the services provided;
  - c. The student's progress;
  - d. Maintenance of the student's enrollment in the independent school;
  - e. Identification of students with suspected disabilities; and
  - f. Committing to participate in dispute resolution as provided under federal and State law.

### **2229.4 Procedure for Students Receiving Special Education Services to Enroll in an Approved Independent School**

- 1) The student or the student's parent shall voluntarily request the enrollment.
- 2) The student's IEP team or the LEA shall determine whether the enrollment is an appropriate placement and least restrictive environment.
- 3) The student's IEP team and the LEA shall comply with all applicable federal and State requirements.



4) A school shall enroll publicly funded students on a first-come, first-served basis until capacity is reached.

5) Publicly funded students seeking to enroll shall do so according to each independent school's established enrollment request policies.

6) If the student's enrollment, pursuant to 2229.4(2), is based on provision of certain services in the student's IEP, the LEA and the school shall work collaboratively to identify a solution.

7) Within 30 days the LEA and the school must determine if they have identified a solution that will enable the student's enrollment to proceed.

(8) If the LEA and approved independent school do not agree on whether the independent school is able to provide the services on the student's IEP, then the LEA and independent school shall jointly contract with a hearing officer to conduct a hearing to make a determination which shall be final. The cost of the hearing officer shall be shared equally between the parties.

(a) If either a Hearing Officer or the LEA and the school certify that the independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately make another appropriate placement that satisfies the federal and state requirements to provide the student with a free and appropriate public education in the least restrictive environment. If these conditions are satisfied:

(i) The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board due to its failure to enroll or continue to enroll the student; and

(ii) No private right of action shall be created on the part of the student or his/her family or any other private party to require the LEA to place the student with the approved independent school or to require the school to enroll the student.

9) This rule (2229.4) shall not apply to a therapeutic independent school.

10) For enrollments sought after the start of the school year, the LEA shall agree to pay tuition for the enrollment sought by the student until agreement is reached with the school or until the hearing officer in 2229.4(7) issues an opinion.

#### **2229.5 Out-of-State Programs.**

(a) Unless otherwise determined by the Board, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, it shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

(b) Rates paid for tuition, room and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.

#### **2229.6 Approval Procedures to Receive Public Funds**

(1) Application for public funds approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the Board may at any time submit an application for public tuition approval to the Secretary.

(2) Application for special education approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.

(3) The procedures for public tuition approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.

#### **2229.7 Notification**

After receiving approval for public tuition, an independent school shall notify the Secretary of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board for a change to an independent school's approval for public tuition purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the Board. If the school disagrees with the proposed change to its approval for public tuition purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.

#### **2229.8 Minimum Level of Service**

Independent schools that are approved for public tuition purposes shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. §2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

#### **2230 Placement Prohibition.**

No responsible agency, as defined by Rule 2360.3, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Rule 2229, unless the placement is pursuant to:

- (a) Subsection 2230.1 of this rule,
- (b) A court order, or
- (c) A hearing officer order.

#### **2230.1 Exceptional Circumstances - Approval Process**

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not been approved to receive public tuition. Notwithstanding Rule 2366.2.2(7), in instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved

by the Secretary's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.

(a) Exceptional circumstances exist when:

(i) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve children with the category of disability under which the child was determined to be eligible for special education; and

(ii) The proposed placement is deemed appropriate by the child's IEP team.

(b) The Secretary may specify conditions under which the placement is to be carried out.

## **2231 Written Agreements Required**

### **2231.1 Agreement as to Costs**

- (a) In order to obtain approval to receive public tuition, an independent school shall assure the State Board of Education that prior to enrolling a child with an IEP who is placed in the independent school as an appropriate placement and least restrictive environment by the student's IEP team, it will enter into a written agreement with the LEA committing to the requirements set forth in 2229.3 and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. §2948, the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the child's enrollment.
- (b) The Secretary shall consult with independent schools in Vermont and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition cannot exceed the school's actual or anticipated costs of providing special education services to the student and may not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.
- (c) An approved independent school that enrolls a student with an IEP pursuant to Rule 2229.1, may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.
- (d) An approved independent school that enrolls a student under Rule 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts are reasonable in relation to special education services provided by the school

### **2231.2 Agreement as to Non-Instructional Services**

In order to obtain approval to receive public tuition, an independent school shall assure the Board that within thirty days of enrolling a child with an IEP, it will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.

### **2232 Rate Approval for Independent Schools Approved to Receive Public Tuition**

(1) Each independent school approved to receive public tuition by the Board shall annually report its rates for special education tuition, related services and room and board to the Secretary on a form prescribed for that purpose.

(2) The rates that an independent school approved for public tuition charges for tuition, special education and related services and room and board shall be no more than the actual or anticipated costs of providing the special education and related services and shall not exceed the maximum rates set by the Secretary.

(3) The Secretary shall review each approved independent school's annual rate report. If the Secretary concludes that an approved independent school's rates are not reasonably related to the actual or anticipated costs of providing the services or exceed the maximum rates set by the Secretary, the Secretary shall not approve the rates unless he or she deems the higher rates to be warranted. In making that determination, the Secretary shall offer the school an opportunity for explanation regarding why the maximum rate set by the Secretary is not adequate. If the explanation is not satisfactory to the Secretary, he or she shall notify the Council for Independent Schools and shall refer the matter to the Board .

(a) Upon such referral by the Secretary, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

(b) The State Board's determination shall be final.

(4) Time lines for rate approvals from the Department

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Department prior to November 15. The Commissioner shall notify the independent school of the results of the review on or before January 15.

(b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

### **2233 Standards and Regulations**

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

**Section 2234 Corrections Education Program.**

To the extent applicable, the Commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8, as if it were an independent school.

***[Rule 2200 continues (tutorial programs, distance learning programs, postsecondary approvals) but the text is not included in this document.]***