

2200 Series Rulemaking
required for
Approved Independent Schools
by
Act 173 of 2018



Act 173 has two parts:

Changes to special education law.
2360 Series Rules



Changes to Independent School Governance

- 1) Financial capacity measures added.
- 2) Special ed enrollment requirement added.
- 3) Exceptional circumstances defined.
- 4) Special education approval deleted.
- 5) Special education rate-setting clarified.

Financial capacity to meet stated objectives

Approved schools must report adverse financial events. Specifically:

- Failure to file tax returns
- Failure to meet payroll
- Failure to maintain retirement contributions
- Using designated funds for non-designated purposes
- Noncompliance with debt obligations
- Loss or conditioning of accreditation
- Insolvency

*Remember
Burlington
College?*

Enrollment policies

“An independent school that intends to accept public tuition shall be approved ... only on the condition that the school agrees ... to **enroll any student who requires special education services ... placed in or referred ... by the local education agency.**” *(beginning July 1, 2023)*

“The Secretary of Education shall establish **minimum standards of services** for students receiving special education services in independent schools...”

Exceptional Circumstances

- If a school is unable to retain qualified special ed staff, “then the LEA shall make another placement that satisfies the federal requirements ...”
- The school “shall not be subject to any disciplinary action or revocation of its approved status ...
- If the school and the LEA disagree on inability to retain qualified staff, they “shall jointly contract with a hearing officer ...”

Special Education Approval

*"An independent school is **not required to demonstrate it has the resources to serve every category** of special education ..."*

Instead, schools shall:

- "Demonstrate an understanding of special education requirements..."
- Commit to implementing IEPs
- Employ or contract with licensed staff
- Agree to communicate with the LEA
- Commit to participate in dispute resolution processes required by law.

Special Ed Rate-Setting

Two rate-setting models:

- **Excess Cost Model:** General education schools providing special education.

16 V.S.A. §2973(b)(2)(C)

- **Tuition Model:** Special education-only schools.

16 V.S.A. §2973(b)(2)(A)

Secretary's Role:

Excess Cost Model

- The Secretary sets maximum costs, based on schools' actual or anticipated costs, which are billed as "excess costs" to the sending LEAs.

Tuition Model

- The Secretary sets maximum tuition rates, which must be reasonably related to schools' level of services. Tuition is a one-price model for services including both general ed and special ed.

Rate-Setting Changes

VISA has recommended rule additions for:

- A **fact-based** process which relies on verifiable cost data to make rate determinations.
- A **transparent** process of evaluating rate requests, i.e., open to review.
- **Consistent** application of policies and standards across schools and from year to year.
- **Predictable** results, enabling schools to plan their futures.

Rulemaking Summary:

- 1) Define “financial capacity”.
- 2) Require special ed enrollment.
- 3) Define exceptional circumstance exemption.
- 4) Delete special education approval requirement.
- 5) Clarity rate-setting.