



**STATE OF VERMONT**  
REPRESENTATIVE OLIVER K. OLSEN  
HOUSE OF REPRESENTATIVES

October 29, 2016

Stephan Morse, Chair  
Vermont State Board of Education  
219 North Main Street, Suite 402  
Barre, VT 05641

Michael Clasen, Chair  
Vermont Interagency Committee on Rules  
109 State Street, Pavilion Building  
Montpelier, VT 05609

TRANSMITTED VIA EMAIL

**RE: Proposed State Board of Education Rule Series 2200**

Gentlemen:

As a legislator representing four communities (Londonderry, Stratton, Weston, and Winhall) with school choice, I am writing to express grave concerns about the rulemaking process initiated by the State Board of Education (SBE) in relation to proposed amendments to Rule Series 2200 (approved independent schools).

At the July 29, 2016 meeting of the SBE, Chairman Morse characterized the proposed rule changes as “**dramatic.**”

I could not agree more.

The SBE proposed rule changes would require independent schools to comply with **all** state and federal laws and rules applicable to Vermont public schools [proposed SBE rule 2222.1(a)(iv)] as a condition for payment of tuition from local school districts. This requirement has far-reaching implications that encroach upon fundamental issues of independent educational mission, governance, and financial structure that have developed over the past 140 years. In essence, this proposed rule would require independent schools to transform themselves into quasi-public schools – or remain independent and

exclude underprivileged students who will not be able to afford to attend the school, since local school districts would be prohibited from paying tuition to independent schools that do not comply with these proposed rules.

Let me be clear: should the proposed amendments to the rules be adopted in their current form, they will have a **devastating impact** on the Manchester & the Mountains region, including the four towns in my legislative district that have school choice. This will have a **negative impact on the range of educational opportunities** available to students in our region, would **harm our local school districts**, including local public elementary schools, **lead to the devaluation of real estate** in the region, and **destabilize the regional economy**.

The most immediate impact of these rules would be to severely restrict access to educational opportunities available to students in our region. To put this into perspective, approximately 95% of high school students in Londonderry, Stratton, Weston, and Winhall attend independent schools, including **Burr & Burton Academy, Long Trail School, and the Stratton Mountain School**. To the extent that these independent schools are unable to comply with the proposed rule changes, low and middle income students will no longer be able to enroll in these schools (since school districts would be prohibited from paying tuition to schools that do not comply with the new rules), and **school choice as we know it will cease to exist**.

The economic impact to the region – which has already been struggling to recover from the Great Recession – would be tremendous. The potential impact to real estate valuations, alone, should be a cause for immediate concern – **there could be devaluation of the regional residential real estate market in the range of \$36 to \$194 million**.

I have many constituents who have moved to this region, from out of state – bringing their businesses, jobs, and economic prosperity, along with their children – specifically because they were attracted to the diversity of educational opportunities available through school choice and access to high quality public and independent schools in our region. In an otherwise challenging economic environment, school choice and access to a diverse ecosystem of independent and public schools are viewed as critical assets to be leveraged in our efforts to strengthen and grow the regional economy.

While I appreciate the SBE's commitment to holding one of the public hearings in Manchester, I have a fundamental objection to such a major change of public policy being rushed through an administrative rule change. More tactically, I have concerns about the process leading up to the pre-filing of these proposed rule changes with the Interagency Committee on

Administrative Rules (ICAR), including the lack of economic analysis, and the confusion this rulemaking process will create for the school district merger activity under Act 46.

What follows is a summary of my specific concerns with these proposed rules and the associated rulemaking process, which I will address in turn:

1. There is nothing in the public record to indicate that the SBE has assessed the economic impact of the proposed rules, which would be necessary to inform the economic impact statement required under 3 V.S.A § 838(a)(2);
2. There is nothing in the public record to indicate that the SBE has evaluated the cost implications that this rule will have on local school districts, as required under 3 V.S.A. § 832b;
3. The proposed rule changes applicable to in-state independent schools are contrary to legislative intent, as expressed through acts of the General Assembly, which have established and reinforced clear distinctions between public and independent schools over the years;
4. The proposed rule changes applicable to out of state independent schools would have an extraterritorial effect, potentially violating the Commerce Clause of the U.S. Constitution, and is contrary to legislative intent;
5. The proposed transition timeline would be disruptive to students already enrolled in an independent school; and
6. The proposed rule changes will add to considerable public confusion in the context of the Act 46 rulemaking process that is already underway, and would be disruptive to the Act 46 implementation process.

### **Economic Impact Statement**

Although an economic impact statement was submitted with the pre-filing to the ICAR (included with this letter as Attachment E), there is nothing in the public record to demonstrate that the SBE has actually undertaken an assessment of the potential economic impact of the proposed rule changes.

I have reviewed all of the SBE meeting agenda, minutes, and video recordings, going to back to the initial SBE request on November 17, 2015 for the AOE to draft proposed amendments to the 2200 Series Rules. There is no record of the SBE ever requesting an economic impact assessment or authorizing the development of an economic impact statement. Furthermore, I could find no evidence that an economic impact assessment or statement was ever presented to, or reviewed by, the SBE, in conjunction with the proposed rule changes.

The economic impact statement received by ICAR on September 7, 2016 was not part of the SBE agenda packet for its July 29, 2016 or August 23, 2016

meetings (Attachments A & C); and from the video recordings of those meetings, there is nothing to suggest that this was ever presented to, or reviewed by, the board. Additionally, there is no reference to an economic impact statement in the minutes of either meeting (Attachment B & D). By all appearances, the economic impact statement presented to ICAR is procedurally defective, in that it was never part of the SBE public record, was never reviewed by the SBE, and was not attached to the proposed rule change that the SBE authorized for pre-filing on July 29<sup>th</sup> and August 23<sup>rd</sup>. In summary, the SBE never authorized the submission of the economic impact statement that was transmitted to ICAR – at least not in a public meeting, which would be required under Vermont’s public meeting law, 1 V.S.A § 312(a)(1):

*“No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting...”*

Setting aside the procedural concerns, the pre-filing with ICAR is substantively defective, in that it lacks the specificity required under 3 V.S.A § 838(c)(1):

*“The economic impact statement shall analyze the anticipated costs and benefits to be expected from adoption of the rule. Specifically, each economic impact statement shall, for each requirement in the rule:*

*(A) List categories of people, enterprises, and government entities potentially affected and estimate for each the costs and benefits anticipated.*

*(B) Compare the economic impact of the rule with the economic impact of other alternatives to the rule, including no rule on the subject or a rule having separate requirements for small business.”*

The statute clearly requires an itemization of each requirement, coupled with estimates of expected costs and benefits that each requirement will have on categories of people and entities impacted. The economic impact statement submitted to ICAR only includes a vague statement that schools seeking approval under the proposed rules would incur increased costs of seeking accreditation, and an equally non-specific statement that students, parents, and school districts would see a benefit.

The economic impact statement fails to identify the expected costs from the numerous other requirements that would be imposed on independent schools, should proposed rule 2222.1(a)(iv) be adopted. The rule is very broad, in that it would require approved independent schools to comply with “*all other state*

and federal laws and rules applicable to Vermont public schools...” in order to accept tuition payments from school districts. A summary of these requirements are enumerated in a document from the AOE (included with this letter as Attachment H). Many of these requirements would have quantifiable cost impacts, yet none of them are addressed in the economic impact statement, as required by 3 V.S.A § 838(c)(1).

The proposed rule changes would have a macro-level economic impact that extends beyond the direct costs that would be incurred by independent schools conforming to the rules. To the extent that independent schools are unable or unwilling to meet these proposed requirements, and the availability of school choice and access to independent schools is curtailed, there will be secondary economic impacts that need to be assessed, including the impact on the tax base, specifically owners of residential property.

Real estate professionals in this region can speak to the premium that is built into residential real estate valuations for communities that have access to a robust ecosystem of independent schools with school choice. Published academic research has quantified the value of this premium in the range of 3% to 16%. I have included a copy of this study, which was published in Volume 24, No. 1 of the Journal of Housing Research in 2015, as Attachment F. By applying the premium identified by this study to the aggregate residential grand list of the following towns in our region, it is reasonable to conclude that these rules have the potential to trigger a devaluation in residential real estate values within our region in the range of \$36 - \$194 million:

TOWN	TOTAL RESIDENTIAL PROPERTY VALUE*	POTENTIAL 3% LOSS OF VALUE (LOW)	POTENTIAL 16% LOSS OF VALUE (HIGH)
DORSET	\$ 260,704,500	\$ 7,821,135	\$ 41,712,720
LANDGROVE	\$ 30,735,100	\$ 922,053	\$ 4,917,616
MANCHESTER	\$ 393,499,800	\$ 11,804,994	\$ 62,959,968
PERU	\$ 44,964,500	\$ 1,348,935	\$ 7,194,320
SANDGATE	\$ 23,910,800	\$ 717,324	\$ 3,825,728
SUNDERLAND	\$ 80,592,000	\$ 2,417,760	\$ 12,894,720
WINHALL	\$ 71,106,500	\$ 2,133,195	\$ 11,377,040
DANBY	\$ 78,611,500	\$ 2,358,345	\$ 12,577,840
MT. TABOR	\$ 11,967,300	\$ 359,019	\$ 1,914,768
LONDONDERRY	\$ 133,104,400	\$ 3,993,132	\$ 21,296,704
STRATTON	\$ 24,124,700	\$ 723,741	\$ 3,859,952
WESTON	\$ 60,606,000	\$ 1,818,180	\$ 9,696,960
<b>TOTAL</b>	<b>\$ 1,213,927,100</b>	<b>\$ 36,417,813</b>	<b>\$ 194,228,336</b>

\* Based on 2015 Grand List Values (Non-Equalized)

Real estate values are but one example, and at the leading edge of the dramatic economic impact that these proposed rules would have, but would

almost certainly lead to a destabilization of the regional economy. These economic impacts need to be more fully assessed and quantified to ensure that the public engagement process is fully informed.

Without a complete economic impact statement that has been duly authorized by the SBE, the pre-filing with ICAR is incomplete, and should be returned to the SBE, so that the SBE can undertake the necessary analysis to develop and approve a full and comprehensive economic impact statement for submission with the proposed rule changes to ICAR.

Furthermore, without a full and comprehensive economic impact statement, it will be difficult for ICAR to fully assess the breadth and depth of impact, which is necessary to develop the most appropriate strategy for maximizing public input during the rulemaking process.

### **Cost Implications on Local School Districts**

The same procedural concerns I have raised with respect to the economic impact statement apply to the school district impact statement required under 3 V.S.A. § 832b:

*“...the agency proposing the rule shall evaluate the cost implications to local school districts and school taxpayers, clearly state the associated costs, and report them in a local school cost impact statement...”*

There is no evidence in the public record to show that the SBE ever evaluated these cost implications or authorized the submission of the statement that was submitted to ICAR. The statement that was pre-filed with ICAR fails to identify any cost implementations, and only includes a vague statement about “benefits”. The SBE has not considered the very real cost impacts that will accrue to school districts that pay tuition to independent schools that are able to comply with the proposed SBE rules, even though the economic impact statement submitted to ICAR acknowledges unspecified increased costs to independent schools. If there are increased costs for independent schools to comply with the proposed rule changes, those costs will be passed along to local school districts through increased tuition rates.

Once the SBE has quantified the economic impact on independent schools, it will need to evaluate the implications of those costs being passed onto local school districts, which should include projections of the impact to tax rates in impacted school districts.

Based on discussions with local educational leaders, these changes are likely to have a negative impact on our local public elementary schools. For example, the Mountain Town RED, which operates a public elementary

school, has actually experienced a slight increase in student enrollment in recent years, in contrast to the downward statewide trends we have seen. By restricting access to the wide range of secondary school options that students now have access to, there will likely be a negative impact on incoming enrolment in the public elementary school, which will drive up the cost per student, resulting in higher education tax rates for the district.

Again, without a full and comprehensive school district impact statement, it will be difficult for ICAR to fully assess the breadth and depth of impact, which is necessary to develop the most appropriate strategy for maximizing public input during the rulemaking process.

### **In-State Independent School Rules Contravene Legislative Intent**

The SBE has no legal authority to promulgate rules that circumvent an act of the General Assembly or otherwise contravene legislative intent.

Considering the extensive legislative history and statutory framework that distinguishes independent schools from public schools, the SBE proposed rule changes represent a significant deviation from legislative intent.

I recently asked Legislative Council to prepare a preliminary analysis of the enforceability of these proposed rules, should they be adopted in their current form, which you will find enclosed with this letter (Attachment G). This analysis, which was prepared by Jim DesMarais, Esq., outlines very serious problems with the proposed rule changes. Note that this analysis looked at the potential issues that could be raised in the courts – this analysis did not evaluate the proposed rule changes within the context of a Legislative Committee on Administrative Rules (LCAR) proceeding, which would likely look to a much higher standard for conformance with legislative intent.

### **Out of State Independent Schools**

SBE proposed rule 2222.2 would apply the same standards to out of state independent schools that would apply to independent schools in Vermont, including proposed rule 2222.1(a)(iv). Effectively this rule would require an out of state independent school to comply with rules and regulations that are specific to Vermont, e.g. educator licensure requirements. This raises serious constitutional questions, given its extraterritorial effect, and potential violation of the Commerce Clause of the U.S. Constitution. As a practical matter, the rule would have the effect prohibiting the payment of tuition to an independent school outside of Vermont, as it would likely be impossible for an out of state independent school to simultaneously conform to Vermont's public school regulations, in addition to regulations within its own jurisdiction.

During this past legislative biennium, the Vermont House of Representatives considered, and rejected, a proposal to substantially limit payment of tuition to out of state independent schools. This was initially included in the bill that was ultimately enacted into law as Act 46. The House, through the action of a majority of our state's elected Representatives, voted to remove the provision that would have restricted payment of tuition to out of state independent schools. As a co-sponsor of the amendment to strike this provision from the bill, I can assure you that the intent was very clear – to ensure that there would not be a prohibition on the payment of tuition to out of state independent schools.

The SBE now proposes to do through administrative fiat what the elected representatives of the people explicitly chose not to do. In summary, this particular rule is contrary to legislative intent and raises serious constitutional questions that need to be addressed prior to the public engagement process.

### **Transition Timeline & Impact on Current Students**

Many of the proposed rule changes take effect on July 1, 2018. Since many independent schools may be unable or unwilling to comply with the proposed requirements, a student currently attending an independent school as a freshman in the 2016/2017 school year would no longer be eligible for tuition from the school district in his or her sophomore year (2018/2019) if that school was not compliant with the rules. The proposed rules do not include any provision to allow these students to complete their studies at the same school in these situations, which would create significant hardship and disruption for students. This would have a disproportionate impact on financially disadvantaged students.

Additionally, the transition provisions do not appear to specify a date for proposed rule 2222.1(a)(iv). In the absence of a specific transition date, the rule could be interpreted as taking effect upon adoption of the rule.

### **Disruption to the Act 46 Implementation Process**

For a variety of reasons, there has been a great deal of confusion over the impact that Act 46 will have on school choice and access to independent schools. Due to the amount of misinformation that continues to circulate, there are a great number of people who have the mistaken impression that there are no merger options that would allow communities to maintain school choice and access to independent schools, or that Act 46 somehow eliminates school choice.

These Act 46 study committees already have enough confusion to navigate through. It is worth noting that the SBE has another rulemaking process

underway concerning Act 46 implementation. These issues are already becoming conflated; further consideration of amendments to the 2200 Rule Series will disrupt many of the Act 46 merger efforts at a critical time in communities with school choice. In the interest of minimizing disruption to the Act 46 implementation process, and to ensure better coordination of changes to statewide policy, I would urge the SBE and ICAR to consider deferring the development and implementation of a public engagement strategy around the 2200 Series Rules until such time as the Act 46 rulemaking process has come to a close and voluntary Act 46 merger activity is substantially complete.

**Conclusion**

In closing, for the aforementioned reasons, and given the magnitude of the impact, I am asking ICAR to reject the SBE proposed 2200 Rule Series pre-filing, so that the SBE can give further consideration to the substantial legal and economic impacts these proposed rules would have. Furthermore, in the interest of minimizing disruption, I am asking the SBE to consider delaying further action on this rulemaking until the voluntary merger process under Act 46 is substantially complete.

Sincerely,



Rep. Oliver K. Olsen

CC: Rebecca Holcombe, Secretary of Education

**Enclosures**

- Attachment A: Agenda Packet for July 29, 2016 SBE Meeting
- Attachment B: Minutes of July 29, 2016 SBE
- Attachment C: Agenda Packet for August 23, 2016 SBE Meeting
- Attachment D: Minutes of August 23, 2016 SBE Meeting
- Attachment E: Economic and School Impact Statement Submitted to ICAR
- Attachment F: Study Published the Journal of Housing Research
- Attachment G: Legal Analysis Prepared by Legislative Counsel
- Attachment H: Summary of Public School Requirements Prepared by AOE

## **Attachment A**

### **Agenda Packet for July 29, 2016 SBE Meeting**

The current month's meeting agenda and packet materials may be accessed [electronically](#).

*The SBE's Strategic Goals are to ensure that Vermont's public education system operates within the framework of high expectations for every learner and ensure that there is equity in opportunity for all and to ensure that the public education system is stable, efficient, and responsive to changes and ever-changing population needs, economic and 21st century issues.*

- Agenda -			
9:30 a.m.	A B C	<b>Preliminaries</b> Call to Order - Stephan Morse, Chair Public to be heard Consent Agenda	DISCUSS/VOTE
9:50 a.m.	D E F G	<b>Updates</b> Board Announcements & Student Representative Emails Chair's Report - Stephan Morse Secretary's Report - Rebecca Holcombe Committee Reports - Bill Mathis, Mark Perrin	DISCUSS DISCUSS DISCUSS DISCUSS
10:15 a.m.	X	<b>Executive Session</b>	
11:00 a.m.	Z	<b>Vermont School for Girls</b>	DISCUSS/VOTE
11:15 a.m.	H	<b><u>Act 46 Update - Draft guidance for alternative structures and mergers</u></b> Donna Russo-Savage, Agency of Education	DISCUSS/VOTE
11:45 a.m.	I	<b><u>Post-Secondary Rules Update - Draft</u></b> Clare O'Shaughnessy, Agency of Education	DISCUSS/VOTE
12:00		<b>Lunch</b> - Lunch provided - invitation only	
12:45 a.m.	J	<b><u>Rules Update - Independent Schools</u></b> Clare O'Shaughnessy, Agency of Education	DISCUSS/VOTE
1:15 p.m.	K	<b><u>Burlington College Records</u></b> Clare O'Shaughnessy, Agency of Education	DISCUSS/VOTE
1:45 p.m.	L	<b>ESSA</b> 1. SBE guidance to the state on ESSA 2. SBE letter to Sec King regarding ESSA	DISCUSS/VOTE DISCUSS/VOTE
	M	<b><u>Written Updates Attached - FY 16 SBE Expenditure Report</u></b>	

*Indications of time on the agenda are best estimates, and therefore may not reflect actual time an item is addressed. We will do our best to address items within the time indicated and extra effort will be made to adhere to the time indicated for public hearing and voting items.*



VERMONT STATE BOARD OF EDUCATION  
Agency of Education  
219 North Main Street, Suite 402  
Barre, VT 05641

July 29, 2016

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If you wish to remove an agenda item  
for further discussion, please notify  
[Suzanne.Sprague@vermont.gov](mailto:Suzanne.Sprague@vermont.gov) (802)479-1030

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**Item C – Consent Agenda**

1. Minutes – June 20, 2016, SBE Meeting
2. Minutes – June 21, 2016 SBE Meeting

**State Board of Education**

**Date July 29, 2016**

**Item J**

**AGENCY OF EDUCATION**

**Barre, Vermont**

**TEAM:** Legal/Finance—Private Education Programs

**ACTION ITEM:** Will the State Board of Education vote to authorize the Agency of Education to pre-file the proposed revised amendment of SBE Rule 2200 series and Rule 7000 series (Rule 7320 only) including Rule 2200 et seq. 2230.4, Private Education Programs (including Distance Learning Schools, Corrections Education, Tutorial Programs, and Private Kindergarten Programs), with the Interagency Committee on Administrative Rules (ICAR) for review by the Committee to begin the Administrative Rule-Making Process?

[J – attachment – SBE Resolution](#)

[Ja – Redline version - Rule 2200](#)

[Jb – Clean version - Rule 2200](#)

[J1 – Letter – Burr & Burton Academy](#)

[J2 – Letter - VT Independent Schools Association](#)

[J3 - Independent Schools Approved For Special Education](#)

[J4 - Commission On Independent Schools - Standards For Accreditation](#)

[J5 - VISA Responses to State Board of Education Rule Proposals](#)

[J6 - Comparison of Accredited vs. Approved Independent Schools in Vermont](#)

[J7 - VSBA Resolution on Public Funds to Independent Schools](#)

[J8 – Letter – VT School Board’s Association](#)

**RECOMMENDED ACTION:** that the State Board of Education authorize the Agency of Education to pre-file the proposed revised amendment of SBE Rule 2200 series including Rule 2200 et seq. 2230.4, Private Education Programs (including Distance Learning Schools, Corrections Education, Tutorial Programs and Private Kindergarten Programs) and Rule 7000 series (Rule 7320 only) with ICAR for review by ICAR to begin the Administrative Rule- Making Process.

**STATUTORY AUTHORITY:** 16 V.S.A. §164(14)

**BACKGROUND INFORMATION:** On November 17, 2015, the State Board of Education ordered the Agency of Education to engage a comprehensive review of the independent school rules of the State Board and to propose revisions to the independent school rules in alignment with the Board's policy directive (of November 17, 2015). The Board's policy directive of November 17, 2015 is attached as Exhibit 1. The Rule 2200 series also includes Distance Learning Schools, Corrections Education, Tutorial Programs and Private Kindergarten Programs, which are also amended within this proposed rule revision. The proposed revised Rule 220 series and a related rule within the Rule 7000 series are attached for the Board's review. These proposed rules represent the Agency's best effort to administer the Board's policy directive of November 17, 2015 to the Agency.

**POLICY IMPLICATIONS:** Updating the approval process rules for independent schools to reflect current best practices, consistency of reporting/fiscal accountability, equal opportunity and equity, and enhanced quality assurance for approved schools receiving public money, as set forth above, including Distance Learning Schools, Corrections Education, Tutorial Programs and Private

Kindergarten Programs.

**COST IMPLICATIONS** (i.e., Monetary Resources; Staff Resources): \$2,200. This is the flat rate that the Secretary of State charges state agencies for statutory publication of proposed rules. Also, the Agency may incur fees for any public meeting it holds to solicit public comment. Any such fee is expected to be an ancillary cost to the Agency.

**STAFF AVAILABLE:** Clare O'Shaughnessy, Staff Attorney; Cassandra Ryan, School Finance



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*State Board of Education*

November 13, 2015

**Initiation of a Comprehensive, Periodic Review of the  
2200 Series of the SBE Rules and Practices**

Whereas, the state board rules concerning the “evaluation of private education programs” (2200 series) have not been revised since 2001, and

Whereas, a broad number of changes have occurred in society and in education during that time, and

Whereas, many rules and practices may now be inadequate or antiquated; and

Whereas, Goal Two of the state board’s strategic plan calls for a review and updating of state board rules; and Goal One calls for identifying the magnitude and causes of the achievement gap;

The state board of education requests the Secretary of Education to recommend to the state board revisions to these rules and practices in order to modernize, and make them more efficient.

Specifically, the board provides the following guidance to the secretary and requests her recommendations on --

- Updating antiquated language - The board requests the secretary’s recommendations on updating the language and the system, in whole and in part.
- Fiscal Accountability – The law requires the state board to assure that each school has adequate resources. The board considers the current rules insufficient to meet this statutory requirement. The board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.
- Equal Opportunity and Equity – Currently, the provisions for assuring equal access and admission to private schools are not sufficient. 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.



- The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The board requests that independent schools be evaluated periodically using a NEASC system.
- Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The board realizes that certain schools may specialize in providing services for certain handicapping conditions, and that circumstances will vary.

The board requests an update on progress at the December 2015 meeting and a draft of proposed rule revisions at the January 2016 meeting. Further activities and calendar markers will be determined in January 2016.



2200 Evaluation of Private Education Programs ~~Independent School Program Approval~~;

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2210 (reserved).

2220 Approval of Independent Elementary and Secondary Schools

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~~Statement of Purpose.~~

~~The purpose of independent school approval rules is to assure acceptable educational opportunities for students enrolled in Vermont's independent schools.~~

~~Statement of Purpose, Vermont State Board of Education, November 17, 2015:~~

~~Whereas, the State Board rules concerning the "evaluation of private education programs" (2200 series) have not been revised since 2001, and~~

~~Whereas, a broad number of changes have occurred in society and in education during that time, and~~

~~Whereas, many rules and practices may now be inadequate or antiquated; and~~

~~Whereas, Goal One of the State Board's strategic plan calls for identifying the magnitude and causes of achievement gaps;~~

~~And Goal Two of the State Board's strategic plan calls for a review and updating of State Board rules;~~

~~The State Board of Education requests the Secretary of Education to recommend to the State Board revisions to these rules and practices in order to modernize, enhance equity and quality, and make them more efficient. Specifically,~~

~~••Updating antiquated language - The Board requests the Secretary's recommendations on updating the language and the system, in whole and in part.~~

~~••Fiscal Accountability - The law requires the State Board to assure that each independent school has adequate resources. The Board considers the current rules insufficient to meet this statutory requirement. The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.~~

~~••Equal Opportunity and Equity - Currently, the provisions for assuring equal access and admission to private schools are not sufficient. 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.

@@The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The Board requests that independent schools be evaluated periodically using a NEASC system.

@@Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The Board realizes that certain schools may specialize in providing services for certain categories of disability and that circumstances will vary.

Definition:

“Approved independent schools” are schools that are eligible to receive public funding, and which as a condition of that approval, meet and maintain certain minimum standards, as set forth in these rules. The State allows use of public dollars for education in private institutions that meet the standards and state purposes defined in the approval rules.

2221 ~~Statutory Authority~~ (includes, without limitation) 16 V.S.A. §164(14).-

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

2222 ~~Procedure~~ Application for Approval.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the ~~Commissioner~~ Secretary of Education. Any independent schools seeking approved status as either an initial or renewal application shall comply with Rule 2223. Not less than 180 days prior to the expiration of an independent school’s approval, the Secretary shall send an application packet and a letter notifying the school that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time. which are recognized as provided for in 16 V.S.A., § 165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements § 2225 below.

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

The process below (2222.1 to 2222.7) shall be followed.

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~~2222.1 Visit.~~

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

~~2222.2 Report.~~

~~The committee shall present a written recommendation regarding approval to the Commissioner. 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 Commissioner to the state board. The report shall contain the findings of other agencies of state government which inspect such facilities.~~

~~2222.3 Review.~~

~~The Commissioner shall designate a date for action by the board. Officials of the school shall be notified of this date.~~

~~2222.4 Renewal.~~

~~Not less than six months prior to expiration of a Schools approval, the Commissioner 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.~~

~~2222.5 Extension.~~

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

~~2222.6 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.~~

~~2222.7 Denial, Revocation or Suspension of Approval.~~

~~Prior to recommending denial, revocation or suspension of approval the Commissioner shall obtain the written recommendation of the Council of Independent Schools. If after~~

~~receiving the council's recommendation the commissioner 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. Approval of an independent school shall be revoked or suspended by the board based on a finding that the school no longer meets the criteria for approval listed in section 2226.~~

#### ~~2222.8 Investigations:~~

~~Reports or complaints to the commissioner 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 Commissioner 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.~~

#### ~~2222.9 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.~~

#### ~~Section 2223 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 Department of Education 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 2222.14 Tuition from Public Funds.~~

~~(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless:~~

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(i) the school is approved for special education purposes pursuant to these rules, and through a special education application process developed by the AOE that is consistent with the requirements of the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400), the Special Education Rules of the Vermont State Board of Education at State Board Rule 2360 et seq., and Chapters 99 and 101 of Title 16 of the Vermont Statutes Annotated.

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant

to Rule 7320 of the State Board's rules,

(iii) the school has an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable state or federal law, including, the Vermont Public Accommodations Act (codified at 9 V.S.A. § 4500 et seq.), the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 701 et seq), and the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400).

(iv) the school complies with all other state and federal laws and rules applicable to Vermont public schools including, without limitation providing a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

(v) the school has adequate financial resources to maintain operations and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule 7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. The Secretary may also recommend, as part of any approval recommendation to the State Board, that budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, that independent auditors be periodically employed by the applicant school, and any/all audit results be made available, in whole, to the Secretary, upon request.

#### 2222.2 Tuition from Public Funds, Out of State Independent Schools

(a) 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 and substantially comply with the approval standards set forth in these rules.

(b) In order for tuition to be paid to an independent school in another state that is a special purpose school that is substantially similar to Vermont special purpose approved school, the out of state special purpose school shall substantially comply with the approval standards set forth in Rule 2224.1 and Rule 2224.2 of these rules.

### 2222.3 Length of Approval

The Board may grant initial approval and renewal of approval for not more than five years. The approval term must track, and cannot exceed, a current period of accreditation status by an accrediting entity recognized by the State Board at Rule 7320.

### 2222.4 Extension

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

### 2222.5 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.

### 2222.6 Investigations

Reports or complaints to the Secretary concerning matters related to an approved independent school's adherence to approval standards as set forth in these rules 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 review team shall promptly investigate the allegations, and report its findings, and any recommendation(s) to the Secretary, within forty-five (45) days. The Secretary, after receiving the report and any recommendation(s) of the review team, shall, after consulting with the Council of Independent Schools, make a recommendation to the State Board at its next scheduled meeting, or as soon as practicable, about the continued approval status of the school.

### 2222.7 Denial, Revocation or Suspension of Approval

If the Secretary, after consulting with the Council of Independent Schools, determines that denial, revocation or suspension of approval is warranted, he or she shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the State Board. Approval of an independent school shall be revoked or suspended by the State Board based on a finding that the school no longer meets the criteria for approval as set forth in these rules, including without limitation, (i) Rule 2222.1 and (ii) that the school has failed to adequately provide a learning and (as applicable) residential environment for students that is safe and healthy.

### 2223 Special Education Approval of General Education Independent Schools

In order for an independent school to receive approval for purposes of these rules, it must offer services to students with disabilities in each special education category of disability as defined in by the Special Education Rules of the State Board of Education at Rule 2360 et seq.

2223.1 Out-of-state Programs

Unless otherwise determined by the State Board of Education, in order for an out-of-state independent school to receive publicly funded Vermont students, the out-of-state independent school must 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.

2223.2 Special Provisions Applicable to Approved Independent Schools Providing Special Education Services and Local Education Authorities (LEA) Pursuant to the Individuals With Disabilities in Education Act (IDEA) and the Special Education Rules of the State Board of Education

- (a) There must be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative.
- (b) IEP Teams must identify the personnel to provide IEP services to students. The independent school must verify that the staff identified to provide services has adequate time available to provide services required by the student's IEP. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school.
- (c) General education teachers cannot be identified as service providers on IEPs unless they also have a special education endorsement.
- (d) Independent school staff must have a copy of the student's current IEP in order to implement the following IDEA requirements:
  - (i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
  - (ii) Each teacher and provider described in paragraph (d)(i) of this section is informed of--
    - (1) His or her specific responsibilities related to implementing the child's IEP;
    - and
    - (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (e) LEA's must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student.

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(f) When an IEP Team places a student in an independent school that only serves students with disabilities, IEP Teams, with input from the independent school staff, shall develop a reintegration plan for each student for return to the student's home school. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to the student's home school.

#### 2223.3 Coordination With Responsible Sending Agency

An independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (a) maintaining educational and attendance records and disclosing them to the sending responsible agency and the student's parents;
- (b) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (c) implementing IEPs including documentation of student progress and creating and providing regular progress reports.
- (d) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- (e) these practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

#### 2223.4 Educator Licensure Requirements for Special Educators

An independent school shall satisfy the educator licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

#### 2223.5 Special Education Rates Charged by Independent Schools; Maximum Rate Set by Secretary

(a) The Secretary or his/her designee shall set a maximum rate that can be charged by receiving independent schools for the provision of special education services. The Secretary shall provide a form(s) that an applicant independent school shall complete which provides the Secretary with sufficient information on the previous year's actual costs of the applicant schools for the provision of special education services, beyond those services provided as part of the general education program and accounted for in the regular education tuition, in order that the Secretary has the necessary information to set a maximum rate for the coming school year.

(b) The maximum rate set by the Secretary is not intended to reflect the actual rate charged by the independent school. The actual amount charged shall be set by agreement between an independent school and sending district. The actual amount charged

- (i) cannot exceed the maximum rates set by the Secretary, and
- (ii) shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students.

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(c) An independent school applying for approved status under these rules must assure the State Board that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines actual costs associated with the student's attendance regarding the provision of IEP services.

#### 2223.6 First-Time Applicant for Maximum Rate

An independent school applying for the first time for a maximum rate to be set by the Secretary shall estimate in its application a maximum rate that is as close to projected actual costs as possible, for the coming year, based on relevant factors including, without limitation, anticipated enrollment of students with special needs, nature of services required, and comparative data of other similarly situated independent school applicants for the past two (2) years; the Secretary shall make applications of other similarly situated independent school(s) available for this purpose.

#### 2223.7 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students 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 local educational agency that has educational planning responsibility for the student.

#### 2224 Independent Schools with a Specific State Purpose (e.g. therapeutic and rehabilitative programs)

There are certain approved independent schools and possibly (future) applicant schools that primarily operate solely for the purpose of providing a specific state purpose, such as a dedicated program of unique special education services, therapeutic services or rehabilitative services. These schools may not be suited, due to their specific mission, to serve all students, or serve all categories of disability as defined by the Special Education Rules of the State Board. Notwithstanding any other provision of these rules, Rule 2224.1 and Rule 2224.2 set forth the approval standards for independent schools with a specific state purpose.

#### 2224.1 General Education Review and Approval and Fiscal Review of Independent Schools with a Specific State Purpose

In order to obtain general education approval, and ensure that the school has the resources to remain fiscally solvent during the period of an approval term, the school shall be accredited for academic and fiscal purposes by an accrediting entity recognized by the State

Board pursuant to Rule 7320 of the State Board's rules. In addition, the Secretary shall prescribe a form that requires the applicant school to document how it shall prioritize and provide a learning and (as applicable) residential environment for students that is safe and healthy and comply with any other applicable federal and state laws and rules as may be necessary, to the extent such laws or rules are not covered by the review of the accrediting body.

#### 2224.2 Special Education Review and Approval of Independent Schools with a Specific State Purpose

In order to obtain special education approval the school shall meet the special education standards that apply to approved independent schools as set forth in these Rules, but only for the categories of disability served by the school.

#### 2224.3 Rate Approval for Independent Schools Approved for Specific State Purposes

(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 Agency on or before July 1<sup>st</sup> of each year. The Secretary shall notify the independent school of the results of the review on or before August 15<sup>th</sup> of each year.

(b) If a request for a new rate approval is not submitted by July 1st, the most recent approved rate will be in effect until the following July 1st, when the next rate request is due.

~~2224.1 Tuition may not be paid from public funds to any elementary or secondary school not approved by the board.~~

#### ~~2224.2 Tuition for Independent Schools~~

~~Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont child who has been determined eligible for special education unless:~~

~~(a) The school is approved for special education purposes pursuant to Rule 2228 et seq.;~~

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

~~(c) The Commissioner has approved an exception for a placement in an independent school pursuant to Rule 2228.2(2).~~

~~2224.3 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 accredited or approved by the~~

~~host state or by an accrediting agency recognized by the State 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 2225 Application.~~

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

~~2225.1 The name and address of the school.~~

~~2225.2 A statement of the school's philosophy and purpose.~~

~~2225.3 A description of the school enrollment including a statement of whether it is designed to serve children with a particular disability or with disabilities generally.~~

~~2225.4 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.~~

~~2225.5 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.~~

~~2225.6 A description of physical facilities including plant, materials and equipment and assurances that the facilities meet all applicable state and federal requirements.~~

~~2225.7 Evidence of compliance with local, state and federal requirements pertaining to the health and safety of pupils.~~

~~2225.8 Statements regarding professional staff including:~~

~~2225.8.1 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.~~

2225.8.2 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.~~

2225.8.3 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.~~

2225.9 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.~~

2225.10 The school calendar.

2225.11 Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A., § 166(b)(3).

2225 Corrections Education Program

To the extent applicable, the Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within these rules, as may be applicable.

~~Section 2226 Approval:~~

~~The board may approve an independent school if it finds that:~~

~~2226.1 The description of the school in the approval application is accurate.~~

~~2226.2 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.~~

~~2226.3 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.~~

~~2226.4 The school has classroom, laboratory, library and other facilities necessary to operate its program,~~

~~2226.5 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:~~

~~2226.5.1 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.~~

~~2226.5.2 For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.~~

~~2226.6 The school has an adequate program of continuing professional staff development as demonstrated in the application.~~

~~2226.7 The school employs a sufficient number of professional staff for the population served.~~

~~2226.8 The school satisfies lawful requirements relative to its facilities, fire drills, and the immunization of its pupils against disease.~~

~~2226.9 The school maintains a register of the daily attendance of each of its enrollment.~~

~~2226.10 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.~~

~~2226.11 The school has the financial capacity to carry out its educational purposes for the period of approval.~~

#### 2226 Approval of Tutorial Programs

2226.1 "Tutorial program" means education provided to a student who is placed in a short term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166 and these rules. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.

#### 2226.2 Approval

An approved tutorial program and/or a first time tutorial program applicant shall be subject to the following approval process:

(a) a tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary.

(b) This process and application will address both academic program quality and oversight, as well as special education programming, to ensure that students in specialized environments continue to have access to high quality, academically challenging and supportive learning environments. The Secretary, in his/her discretion, may employ an independent evaluator or require accreditation by an accrediting entity recognized by the State Board at Rule 7320 to conduct or replace the academic review.

(c) In addition, the form prescribed by the Secretary shall, pursuant to Rule 2220, require a tutorial program to provide assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term.

(d) An approved tutorial program shall comply with all other state and federal laws applicable to Vermont public schools including, without limitation, providing a learning and/or residential environment for students that is safe and healthy, unless otherwise specifically provided by law.

(e) The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

#### 2226.3 Special Education Approval of Tutorial Programs

In order to obtain approval, a tutorial program shall meet the special education standards that apply to approved independent schools as set forth in these Rules.

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#### 2226.4 Rate Approval for Tutorial Programs

(a) Each tutorial program shall annually submit its proposed rates for tuition, related services and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program proposed to charge for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, including, without limitation, those set forth in the *Handbook for Financial Accounting for Vermont School Systems*.

(c) The Secretary shall review each tutorial program's annual rate request. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the Secretary will pay to the tutorial program for those services

(d) The Secretary's determination shall be final.

#### 2226.5 Preservation and Maintenance of Student Records by Tutorial Programs

Approved tutorial programs shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

#### 2226.6 Renewal of Tutorial Programs

Not less than 180 days prior to the expiration of tutorial program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the tutorial program not later than 120 days prior to the expiration of the current approval cycle. The applicant tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

#### 2226.7 Denial, Revocation or Suspension of Approval of Tutorial Programs

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board.

#### Section 2227 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.

#### 2227 Preservation of Student Records

Approved independent schools are required to maintain their student academic records in a form prescribed by the State Board of Education. The Secretary is authorized to insure that the student academic records are in appropriate form. An approved independent school is required to inform the Secretary in the event it intends to close, at least ninety (90) days prior to any permanent closure, and to surrender its student academic records to a repository designated by the State Board for storage. The repository is authorized to make verified copies available to students and former students.

#### 2227.1 Maintenance of Academic Records

Each approved independent school operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the independent school discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

#### Section 2228 Special Education Approval of Independent Schools.

##### 2228.1

~~(1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it shall obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.~~

##### ~~(2) Limitation of Special Education Approval.~~

~~Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.~~

##### ~~(3) Out of State Programs.~~

~~Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, 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.~~

##### ~~2228.2 (1) Placement Prohibition.~~

~~No responsible agency, as defined by Rule 2360.3, shall make a special education placement in an independent school that has not been approved for special education purposes nor shall such a placement be made in an independent school that serves special education children who are in a category of disability different from that under which the child was determined to be eligible for special education unless the placement is pursuant to:~~

~~(a) Subsection (2) of this rule;~~

~~(b) A court order, or~~

~~(c) A hearing officer order.~~

~~(2) Exceptional Circumstances – Approval Process~~

~~Upon application by a responsible LEA, the Commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Notwithstanding Rule 2366.2.2(7), in instances in which the Commissioner 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 Commissioner'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 Commissioner may specify conditions under which the placement is to be carried out.~~

~~2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:~~

~~(1) Admissions;~~

~~(2) Least restrictive environment;~~

~~(3) Discipline;~~

~~(4) Graduation;~~

~~(5) Faculty qualifications; and~~

~~(6) Faculty-child ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed children on IEPs;~~

~~2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies, and other service providers serving a child by:~~

~~(1) Maintaining educational records and disclosing them to the sending responsible agency and the child's parents;~~

~~(2) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;~~

~~(3) Implementing IEPs; and~~

~~(4) Providing prior notice to the sending LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.~~

~~These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.~~

~~2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.~~

~~2228.4 Written Agreements Required~~

~~2228.4.1 Agreement as to Costs~~

~~In order to obtain special education approval, an independent school shall assure the State~~

~~Board of Education that prior to enrolling a publicly placed child who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines 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 Commissioner, in accordance with 16 V.S.A. §2948, the agreement shall be with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the child's enrollment.~~

#### ~~2228.4.2 Agreement as to Non-Instructional Services~~

~~In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly placed child who is served pursuant to an IEP, it will enter into written agreement with the sending 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 Commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the child.~~

#### ~~2228.5 Special Education Approval Procedures~~

~~(1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education may at any time submit an application for special education approval to the Commissioner.~~

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

~~(3) The procedures for special education 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.~~

~~2228.6 After receiving approval for special education purposes, an independent school shall notify the Commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The Commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Commissioner may return to the State Board for a change in the school's approval for special education purposes. If the Commissioner petitions the State Board for a change to an independent school's approval for special education purposes, the~~

~~Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.~~

~~2228.7 Independent schools that are approved for special education 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.~~

#### ~~2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes~~

~~(1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Commissioner on a form prescribed for that purpose.~~

~~(2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly placed special education children. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.~~

~~(3) The Commissioner shall review each special education approved independent school's annual rate report. If the Commissioner concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly placed special education children, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the Commissioner, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.~~

~~(a) Upon such referral by the Commissioner, 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.~~

#### ~~2228.9 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 2229 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.~~

#### ~~2228 Transition Provisions~~

~~(a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.~~

~~(b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.~~

~~(c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.~~

~~(d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.~~

~~(e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2222.1(a)(iii).~~

~~(f) On or before July 1, 2018, all approved independent schools must meet all the requirements of Rule 2223.~~

~~(g) Rule 2228 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.~~

#### ~~Section 2230 Approval of Tutorial Programs~~

~~Statutory authority 16 V.S.A. 828~~

~~2230.1 "Tutorial program" means education provided to a pupil who is placed in a short-term program that is not administered by a LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. §166. The average length of stay for children in a tutorial program shall be not more than six months. The Commissioner may waive the average length of stay time period for individual programs, based upon needs of the children served by the program~~

~~2230.2 Procedures for Approval~~

~~2230.2.1 Application shall include the following:~~

- ~~(a) Name, address, telephone number of the tutorial program,~~
- ~~(b) Name of the Chief Executive Officer or contact person,~~
- ~~(c) A statement of the tutorial program's purpose and objectives,~~
- ~~(d) A description of the tutorial program enrollment including a statement of who it is designed to serve,~~
- ~~(e) A description of the plan of organization for the tutorial program and~~
- ~~(f) A tutorial program calendar.~~

~~2230.2.2 Review~~

~~Upon receipt of an application for approval, the Commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.~~

~~2230.2.3 Report to the Commissioner~~

~~The appointed committee shall present a written recommendation regarding possible approval to the Commissioner. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Commissioner to the State Board of Education.~~

#### ~~2230.2.4 Board Action~~

~~The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the tutorial program shall be notified of this meeting date.~~

#### ~~2230.2.5 Term of Approval~~

~~The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.~~

#### ~~2230.2.6 Renewal~~

~~Not less than three months prior to expiration of a tutorial program's approval, the Commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.~~

#### ~~2230.2.7 Denial, Revocation or Suspension of Approval~~

~~Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Commissioner shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.~~

#### ~~2230.2.8 Standards and Regulations~~

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

#### ~~2230.3 Criteria for Approval~~

~~In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:~~

~~2230.3.1 The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in Rule 2230.3.10, below.~~

~~2230.3.2 The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.~~

~~2230.3.3 The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of children.~~

~~2230.3.4 The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.~~

~~2230.3.5 Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.~~

~~2230.3.6 All professional staff has relevant experience and/or training in the duties to which they are assigned.~~

~~2230.3.7 The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible LEA.~~

~~2230.3.8 The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.~~

~~2230.3.9 The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.~~

~~2230.3.10 The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school and coordinates with other responsible agencies such as Department of Children and Families, Community Mental Health Centers, and Family-Parent-Child-Centers by:~~

~~2230.3.10.1 Contacting the responsible LEA (s) (see 16 V.S.A. §1075) in order to access school records and determine the special education status of the child;~~

~~2230.3.10.2 Reviewing the IEP, the child's needs and its own ability to implement the IEP;~~

~~2230.3.10.3 Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, he/she is suspected of having a disability;~~

~~2230.3.10.4 Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;~~

~~2230.3.10.5 Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;~~

~~2230.3.10.6 Implementing IEPs; and~~

~~2230.3.10.7 Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.~~

~~2230.3.11 In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:~~

~~(1) Admissions;~~

~~(2) Discipline; and~~

~~(3) Significant change in placement.~~

#### ~~2230.4 Rate Approval for Tutorial Programs~~

~~2230.4.1 Each tutorial program shall annually report its rates for tuition, related services and room and board, if applicable, to the Commissioner on a form prescribed for that purpose.~~

~~2230.4.2 The rates that a tutorial program charges for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.~~

~~2230.4.3 The Commissioner shall review each tutorial program's annual rate report. If the Commissioner concludes that a tutorial program's rates are not reasonably related to the services provided, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the~~

~~explanation is not satisfactory, the Commissioner shall refer the matter to the State Board of Education.~~

~~2230.4.3.1 Upon such referral by the Commissioner, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.~~

~~2230.4.3.2 The State Board of Education's determination shall be final.~~

~~Section 2231-2230 Approval~~ Recognition of Distance Learning Schools,

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~~Section 2232~~ Statutory Authority:-

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16 V.S.A. Section 166 (b)-(6).

~~Section 2233-2231~~ Definition.

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A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the state board for approved independent schools.

~~Section 2234-2232~~ Procedures and Standards.

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The distance learning school shall meet the procedures and standards set forth in the rules ~~2220-2227, above~~ applicable to approved independent schools, which because of its structure can be applied, and the following rules:

~~(a) Pursuant to 16 V.S.A. § 166(b)(6), a distance learning school approved under these rules shall not be eligible to receive tuition payments from public school districts.~~

~~(b)2234.1~~ The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.

~~(c)2234.2~~ The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.

~~(d) The distance learning school maintains tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment;~~

(e) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

(f) In the event that the school closes, the distance learning school has policies for tuition adjustment or refund.

2232.1 Preservation and Maintenance of Student Records by Distance Learning Schools  
Distance Learning Schools shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

~~2234.3 The distance learning school offers an educational program which is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.~~

~~2234.4 The distance learning school has policies and procedures to:~~

~~(1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program, and,~~

~~(2) Measure student progress to ensure that students continue to benefit from such instruction.~~

~~2234.5 The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.~~

~~2234.6 The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.~~

~~2234.7 Tuition:~~

~~2234.7.1 Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment.~~

~~2234.7.2 The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.~~

~~2234.8 In the event that the school closes, the distance learning school has policies for:~~

~~(1) Tuition adjustment or refund, and~~

~~(2) Preservation and release of student records.~~

~~[NOTE: Rules 2240 through 2260 regarding Postsecondary Certification are currently undergoing amendment through Administrative Rulemaking Procedures and not included herein as such rules are not final.]~~

~~Section 2270 Private Kindergarten Approval.~~

Statutory Authority: 16 V.S.A. Section 166(b)

~~A private kindergarten program shall comply with the procedures and standards set forth in the rules applicable to approved independent schools, and any other laws or rules of as may be applicable to a private kindergarten program, including any applicable rules of the Department for Children and Families.~~

~~A private kindergarten program may be approved to operate by the State Board, for up to five years, without having received accreditation from an accrediting entity recognized by the State Board at Rule 7320, upon (i) a favorable recommendation from the Secretary,~~

~~(ii) documentation that the program complies with any/all preapproval requirements of the Department for Children and Families,~~

~~(iii) satisfactory assurances and documentation that the program complies with the requirements of 16 V.S.A. § 166(c);~~

~~(iv) satisfactory assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term and also provide a learning environment for students that is safe and healthy;~~

~~(v) comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.~~

#### 2270.1 Renewal

~~Not less than 180 days prior to the expiration of private kindergarten program's approval, the Secretary shall send an application packet and a letter notifying the private kindergarten program that the completed application must be received from the private kindergarten program not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.~~

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~~Section 2271 Procedure For Approval:~~

~~2271.1 Application:~~

~~Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Commissioner of Education.~~

~~\* An application for approval shall contain the following:~~

~~\* Name and address of the school; A description of the school's curriculum and methods of instruction;~~

~~\* A description of the school's physical facilities;~~

~~\* A list of the school's staff and their qualifications;~~

~~\* The operating schedule of the school; and A statement certifying that the school is in compliance with the Kindergarten-Nursery School provisions in the Regulations for Day-Care of the Social and Rehabilitation Services Department. (hereinafter "S.R.S. Kindergarten Regulations").~~

~~2271.2 Appointment of Reviewer:~~

~~Upon receipt of an application for approval, the Commissioner shall appoint an educator to review the application and visit the school. In addition, the commissioner shall contact S.R.S. to determine on his or her behalf whether the school meets the "S.R.S. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public-supported kindergarten.~~

~~2271.3 Review:~~

~~The appointed educator shall review the application and visit the school.~~

~~2271.4 Report to Commissioner:~~

~~The appointed educator shall present a written recommendation regarding approval to the Commissioner. The report of the appointed educator shall incorporate the determination of S.R.S. concerning compliance with the "S.R.S. Kindergarten Regulations". A copy of the recommendation shall be provided at the same time to the applicant.~~

~~2271.5 Board Recommendation~~

~~The commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the kindergarten shall be notified of this meeting date.~~

~~Section 2272 Criteria for Approval:~~

~~The State Board shall approve a private kindergarten if it finds that:~~

~~2272.1 The curriculum embodies a minimum course of study, as defined in 16 V.S.A. Section 906, Courses of Study, with learning experiences adapted to a pupil's age and~~

ability.

~~2272.2 The school is in compliance with state requirements pertaining to the health and safety of pupils adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)~~

~~2272.3 The director and teachers in the kindergarten are qualified through training or experience in:~~

~~—structuring kindergarten learning environments which enhance cognitive and social development;~~

~~—teaching skills and concepts in mathematics, language arts, science, the arts, and health which are consistent with principles of child development;~~

~~—planning and leading activities that foster social and emotional growth in young children;~~

~~—dealing with parents and family of children to ensure home support and to promote learning outside of the school or center; and~~

~~—identifying developmental delays in young children.~~

~~2272.4 The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours which is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).~~

~~2272.5 The facility and program meet the "S.R.S. Kindergarten Regulations."~~

#### ~~Section 2273 Additional Requirements.~~

~~2273.1 Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with state and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.~~

~~2273.2 The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.~~

#### ~~Section 2274 Term of Approval.~~

~~The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.~~

#### ~~Section 2275 Denial, Revocation or Suspension of Approval.~~

~~Prior to recommending denial, revocation or suspension of approval to the State Board, the commissioner shall notify the kindergarten of the reasons for the proposed action and shall~~

~~afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.~~

## 7320 Recognized Accrediting Agencies

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Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

1) New England Association of Schools and Colleges  
Burlington, Massachusetts.

~~—Middle States Association of Colleges and Schools/Commission on Higher Education,  
Philadelphia, Pennsylvania.~~

~~—Northwest Association of Schools and Colleges, Seattle, Washington.~~

~~—Southern Association of Colleges and Schools—Commission on Colleges, Atlanta, Georgia.~~

~~—Western Association of Schools and Colleges—Accrediting Commission for Senior Colleges,  
Oakland, California.~~

~~—North Central Association of Colleges and Schools, Chicago, Illinois.~~

~~2) Office of Overseas Schools, Department of State, Washington, D.C.~~

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~~3) Any accrediting entity that accredits elementary and secondary schools, that is recognized as an accrediting entity for this purpose, by the United States Department of Education.~~

~~- Department of Education, Northern New England Conference of Seventh-Day Adventists,  
Portland, Maine.~~

~~—Diocesan School Board, Burlington, Vermont.~~

~~—National Association of Trade and Technical Schools, Washington, D.C. (for non-degree  
granting purposes only).~~

~~7330 Private Schools Designated as Public Schools 16 VSA § 827.~~

2200 Evaluation of Private Education Programs Independent School Program Approval

2210 (reserved).

2220 Approval of Independent Elementary and Secondary Schools

Statement of Purpose, Vermont State Board of Education, November 17, 2015:

Whereas, the State Board rules concerning the “evaluation of private education programs” (2200 series) have not been revised since 2001, and

Whereas, a broad number of changes have occurred in society and in education during that time, and

Whereas, many rules and practices may now be inadequate or antiquated; and

Whereas, Goal One of the State Board’s strategic plan calls for identifying the magnitude and causes of achievement gaps;

And Goal Two of the State Board’s strategic plan calls for a review and updating of State Board rules;

The State Board of Education requests the Secretary of Education to recommend to the State Board revisions to these rules and practices in order to modernize, enhance equity and quality, and make them more efficient. Specifically,

☉Updating antiquated language - The Board requests the Secretary’s recommendations on updating the language and the system, in whole and in part.

☉Fiscal Accountability – The law requires the State Board to assure that each independent school has adequate resources. The Board considers the current rules insufficient to meet this statutory requirement. The Board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, and that independent auditors be periodically employed.

☉Equal Opportunity and Equity – Currently, the provisions for assuring equal access and admission to private schools are not sufficient. 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.

◎◎The Use of External Evaluators – The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The Board requests that independent schools be evaluated periodically using a NEASC system.

◎◎Special Education – Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The Board realizes that certain schools may specialize in providing services for certain categories of disability and that circumstances will vary.

Definition:

“Approved independent schools” are schools that are eligible to receive public funding, and which as a condition of that approval, meet and maintain certain minimum standards, as set forth in these rules. The State allows use of public dollars for education in private institutions that meet the standards and state purposes defined in the approval rules.

2221 Statutory Authority (includes, without limitation) 16 V.S.A. §164(14), 16 V.S.A., § 166 and 16 V.S.A., § 2958(e).

2222 Application for Approval.

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary of Education. Any independent school seeking approved status as either an initial or renewal application shall comply with Rule 2223. Not less than 180 days prior to the expiration of an independent school’s approval, the Secretary shall send an application packet and a letter notifying the school that the completed application must be received from the school not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time.

2222.1 Tuition from Public Funds.

(a) Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless:

(i) the school is approved for special education purposes pursuant to these rules, and through a special education application process developed by the AOE that is consistent with the requirements of the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400), the Special Education Rules of the Vermont State Board of Education at State Board Rule 2360 et seq., and Chapters 99 and 101 of Title 16 of the Vermont Statutes Annotated.

(ii) the school is approved by an accrediting entity recognized by the State Board pursuant

to Rule 7320 of the State Board's rules,

(iii) the school has an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable state or federal law, including, the Vermont Public Accommodations Act (codified at 9 V.S.A. § 4500 et seq.), the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 701 et seq.), and the Individuals with Disabilities in Education Act (codified at 20 U.S. Code § 1400).

(iv) the school complies with all other state and federal laws and rules applicable to Vermont public schools including, without limitation providing a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

(v) the school has adequate financial resources to maintain operations and deliver all required educational services during the period of its approval term. Satisfying any financial adequacy review by an accrediting entity recognized by the State Board at Rule 7320 may be satisfactory evidence of financial adequacy to operate and deliver all required educational services during the period of the school's term of approval by the State Board. The Secretary may also recommend, as part of any approval recommendation to the State Board, that budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed, that independent auditors be periodically employed by the applicant school, and any/all audit results be made available, in whole, to the Secretary, upon request.

#### 2222.2 Tuition from Public Funds, Out of State Independent Schools

(a) 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 and substantially comply with the approval standards set forth in these rules.

(b) In order for tuition to be paid to an independent school in another state that is a special purpose school that is substantially similar to Vermont special purpose approved school, the out of state special purpose school shall substantially comply with the approval standards set forth in Rule 2224.1 and Rule 2224.2 of these rules.

#### 2222.3 Length of Approval

The Board may grant initial approval and renewal of approval for not more than five years. The approval term must track, and cannot exceed, a current period of accreditation status by an accrediting entity recognized by the State Board at Rule 7320.

#### 2222.4 Extension

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

#### 2222.5 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.

#### 2222.6 Investigations

Reports or complaints to the Secretary concerning matters related to an approved independent school's adherence to approval standards as set forth in these rules 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 review team shall promptly investigate the allegations, and report its findings, and any recommendation(s) to the Secretary, within forty-five (45) days. The Secretary, after receiving the report and any recommendation(s) of the review team, shall, after consulting with the Council of Independent Schools, make a recommendation to the State Board at its next scheduled meeting, or as soon as practicable, about the continued approval status of the school.

#### 2222.7 Denial, Revocation or Suspension of Approval

If the Secretary, after consulting with the Council of Independent Schools, determines that denial, revocation or suspension of approval is warranted, he or she shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the State Board. Approval of an independent school shall be revoked or suspended by the State Board based on a finding that the school no longer meets the criteria for approval as set forth in these rules, including without limitation, (i) Rule 2222.1 and (ii) that the school has failed to adequately provide a learning and (as applicable) residential environment for students that is safe and healthy.

#### 2223 Special Education Approval of General Education Independent Schools

In order for an independent school to receive approval for purposes of these rules, it must offer services to students with disabilities in each special education category of disability as defined in by the Special Education Rules of the State Board of Education at Rule 2360 et seq.

#### 2223.1 Out-of-state Programs

Unless otherwise determined by the State Board of Education, in order for an out-of-state independent school to receive publicly funded Vermont students, the out-of-state independent school must 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.

2223.2 Special Provisions Applicable to Approved Independent Schools Providing Special Education Services and Local Education Authorities (LEA) Pursuant to the Individuals With Disabilities in Education Act (IDEA) and the Special Education Rules of the State Board of Education

(a) There must be an LEA representative at every IEP meeting. LEAs cannot designate a representative from the independent school to act as the LEA representative.

(b) IEP Teams must identify the personnel to provide IEP services to students. The independent school must verify that the staff identified to provide services has adequate time available to provide services required by the student's IEP. The provision for specialized instruction must be based on the needs of the individual student and not on the availability of services/staffing at the independent school.

(c) General education teachers cannot be identified as service providers on IEPs unless they also have a special education endorsement.

(d) Independent school staff must have a copy of the student's current IEP in order to implement the following IDEA requirements:

(i) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(ii) Each teacher and provider described in paragraph (d)(i) of this section is informed of--

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) LEA's must enter into a contract with the independent schools (prior to enrollment) identifying the specific special education services that will be provided, including the cost for the program. The Vermont Agency of Education sets a maximum allowable rate for each independent school that provides special education services. If justified, additional costs above the maximum allowable rate may be included, based on the individual needs of the student.

(f) When an IEP Team places a student in an independent school that only serves students with disabilities, IEP Teams, with input from the independent school staff, shall develop a reintegration plan for each student for return to the student's home school. The plan should identify the skills, behaviors, etc., that the student must develop in order to return to the student's home school.

2223.3 Coordination With Responsible Sending Agency

An independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (a) maintaining educational and attendance records and disclosing them to the sending responsible agency and the student's parents;
- (b) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (c) implementing IEPs including documentation of student progress and creating and providing regular progress reports.
- (d) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- (e) these practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

#### 2223.4 Educator Licensure Requirements for Special Educators

An independent school shall satisfy the educator licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

#### 2223.5 Special Education Rates Charged by Independent Schools; Maximum Rate Set by Secretary

(a) The Secretary or his/her designee shall set a maximum rate that can be charged by receiving independent schools for the provision of special education services. The Secretary shall provide a form(s) that an applicant independent school shall complete which provides the Secretary with sufficient information on the previous year's actual costs of the applicant schools for the provision of special education services, beyond those services provided as part of the general education program and accounted for in the regular education tuition, in order that the Secretary has the necessary information to set a maximum rate for the coming school year.

(b) The maximum rate set by the Secretary is not intended to reflect the actual rate charged by the independent school. The actual amount charged shall be set by agreement between an independent school and sending district. The actual amount charged

- (i) cannot exceed the maximum rates set by the Secretary, and
- (ii) shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students.

(c) An independent school applying for approved status under these rules must assure the State Board that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines actual costs associated with the student's attendance regarding the provision of IEP services.

#### 2223.6 First-Time Applicant for Maximum Rate

An independent school applying for the first time for a maximum rate to be set by the Secretary shall estimate in its application a maximum rate that is as close to projected actual costs as possible, for the coming year, based on relevant factors including, without limitation, anticipated enrollment of students with special needs, nature of services required, and comparative data of other similarly situated independent school applicants for the past two (2) years; the Secretary shall make applications of other similarly situated independent school(s) available for this purpose.

#### 2223.7 Agreement as to Non-instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students 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 local educational agency that has educational planning responsibility for the student.

#### 2224 Independent Schools with a Specific State Purpose (e.g. therapeutic and rehabilitative programs)

There are certain approved independent schools and possibly (future) applicant schools that primarily operate solely for the purpose of providing a specific state purpose, such as a dedicated program of unique special education services, therapeutic services or rehabilitative services. These schools may not be suited, due to their specific mission, to serve all students, or serve all categories of disability as defined by the Special Education Rules of the State Board. Notwithstanding any other provision of these rules, Rule 2224.1 and Rule 2224.2 set forth the approval standards for independent schools with a specific state purpose.

#### 2224.1 General Education Review and Approval and Fiscal Review of Independent Schools with a Specific State Purpose

In order to obtain general education approval, and ensure that the school has the resources to remain fiscally solvent during the period of an approval term, the school shall be accredited for academic and fiscal purposes by an accrediting entity recognized by the State Board pursuant to Rule 7320 of the State Board's rules. In addition, the Secretary shall prescribe a form that requires the applicant school to document how it shall prioritize and provide a learning and (as applicable) residential environment for students that is safe and healthy and comply with any other applicable federal and state laws and rules as may be necessary, to the extent such laws or rules are not covered by the review of the accrediting body.

#### 2224.2 Special Education Review and Approval of Independent Schools with a Specific State Purpose

In order to obtain special education approval the school shall meet the special education standards that apply to approved independent schools as set forth in these Rules, but only for the categories of disability served by the school.

#### 2224.3 Rate Approval for Independent Schools Approved for Specific State Purposes

(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 Agency on or before July 1<sup>st</sup> of each year. The Secretary shall notify the independent school of the results of the review on or before August 15<sup>th</sup> of each year.

(b) If a request for a new rate approval is not submitted by July 1<sup>st</sup>, the most recent approved rate will be in effect until the following July 1<sup>st</sup>, when the next rate request is due.

#### 2225 Corrections Education Program

To the extent applicable, the Secretary shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within these rules, as may be applicable.

#### 2226 Approval of Tutorial Programs

2226.1 "Tutorial program" means education provided to a student who is placed in a short term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 VSA §166 and these rules. The average length of stay for students in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the students served by the program.

#### 2226.2 Approval

An approved tutorial program and/or a first time tutorial program applicant shall be subject to the following approval process:

(a) a tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary.

(b) This process and application will address both academic program quality and oversight, as well as special education programming, to ensure that students in specialized environments continue to have access to high quality, academically challenging and supportive learning environments. The Secretary, in his/her discretion, may employ an independent evaluator or require accreditation by an accrediting entity recognized by the State Board at Rule 7320 to conduct or replace the academic review.

(c) In addition, the form prescribed by the Secretary shall, pursuant to Rule 2220, require a tutorial program to provide assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term.

(d) An approved tutorial program shall comply with all other state and federal laws applicable to Vermont public schools including, without limitation, providing a learning and/or residential environment for students that is safe and healthy, unless otherwise specifically provided by law.

(e) The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

#### 2226.3 Special Education Approval of Tutorial Programs

In order to obtain approval, a tutorial program shall meet the special education standards that apply to approved independent schools as set forth in these Rules.

#### 2226.4 Rate Approval for Tutorial Programs

(a) Each tutorial program shall annually submit its proposed rates for tuition, related services and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program proposed to charge for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, including, without limitation, those set forth in the *Handbook for Financial Accounting for Vermont School Systems*.

(c) The Secretary shall review each tutorial program's annual rate request. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public schools and the Secretary will pay to the tutorial program for those services

(d) The Secretary's determination shall be final.

#### 2226.5 Preservation and Maintenance of Student Records by Tutorial Programs

Approved tutorial programs shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

#### 2226.6 Renewal of Tutorial Programs

Not less than 180 days prior to the expiration of tutorial program's approval, the Secretary shall send an application packet and a letter notifying the tutorial program that the completed application must be received from the tutorial program not later than 120 days prior to the expiration of the current approval cycle. The applicant tutorial program shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be

updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

#### 2226.7 Denial, Revocation or Suspension of Approval of Tutorial Programs

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board.

#### 2227 Preservation of Student Records

Approved independent schools are required to maintain their student academic records in a form prescribed by the State Board of Education. The Secretary is authorized to insure that the student academic records are in appropriate form. An approved independent school is required to inform the Secretary in the event it intends to close, at least ninety (90) days prior to any permanent closure, and to surrender its student academic records to a repository designated by the State Board for storage. The repository is authorized to make verified copies available to students and former students.

#### 2227.1 Maintenance of Academic Records

Each approved independent school operating in this state shall maintain its permanent records in such a manner that they could be delivered to the State Board of Education in a satisfactory form should the independent school discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

#### 2228 Transition Provisions

- (a) An independent school that is not accredited on the effective date of these rules by a recognized accrediting entity shall be accredited on or before July 1, 2020 if it intends to maintain approval from the State Board.
- (b) The admission and enrollment policies required by these rules must be effective no later than July 1, 2018.
- (c) An independent school that is scheduled to apply for renewed approval status on or before July 1, 2017, may seek an extension of its current approved status, up to June 30, 2018, based upon the rules in existence at the time of the most recent prior approval.
- (d) Any approved independent school that has been approved under the rules that were effective prior to the effective date of these rules shall maintain that approved status through June 30, 2018.
- (e) On or before July 1, 2018 all approved independent schools must have established the admission and enrollment policies required by Rule 2222.1(a)(iii).
- (f) On or before July 1, 2018, all approved independent schools must meet all the requirements of Rule 2223.

(g) Rule 2228 shall only apply to approved independent schools already approved as of the effective date of these rules. An independent school submitting an application for initial approval must meet all the requirements of these rules, upon their effective date.

2230 Recognition of Distance Learning Schools,  
Statutory Authority: 16 V.S.A. Section 166 (b)(6).

2231 Definition.

A "Distance Learning School" means an independent school which offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication or other means and which, because of its structure, does not meet some or all the rules of the state board for approved independent schools.

2232 Procedures and Standards.

The distance learning school shall meet the procedures and standards set forth in the rules applicable to approved independent schools, which because of its structure can be applied, and the following rules:

- (a) Pursuant to 16 V.S.A. § 166(b)(6), a distance learning school approved under these rules shall not be eligible to receive tuition payments from public school districts.
- (b) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (c) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of Vermont Statutes Annotated.
- (d) The distance learning school maintains tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment;
- (e) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.
- (f) In the event that the school closes, the distance learning school has policies for tuition adjustment or refund.

2232.1 Preservation and Maintenance of Student Records by Distance Learning Schools  
Distance Learning Schools shall comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

[NOTE: Rules 2240 through 2260 regarding Postsecondary Certification are currently undergoing amendment through Administrative Rulemaking Procedures and not included herein as such rules are not final.]

#### 2270 Private Kindergarten Approval.

Statutory Authority: 16 V.S.A. Section 166(b)

A private kindergarten program shall comply with the procedures and standards set forth in the rules applicable to approved independent schools, and any other laws or rules of as may be applicable to a private kindergarten program, including any applicable rules of the Department for Children and Families.

A private kindergarten program may be approved to operate by the State Board, for up to five years, without having received accreditation from an accrediting entity recognized by the State Board at Rule 7320, upon (i) a favorable recommendation from the Secretary,

(ii) documentation that the program complies with any/all preapproval requirements of the Department for Children and Families,

(iii) satisfactory assurances and documentation that the program complies with the requirements of 16 V.S.A. § 166(c);

(iv) satisfactory assurances and documentation that specifically describe the ability of the applicant program to remain fiscally solvent during the period of any approval term and also provide a learning environment for students that is safe and healthy;

(v) comply with Rule 2227 and Rule 2227.1 regarding the maintenance and preservation of student records.

#### 2270.1 Renewal

Not less than 180 days prior to the expiration of private kindergarten program's approval, the Secretary shall send an application packet and a letter notifying the private kindergarten program that the completed application must be received from the private kindergarten program not later than 120 days prior to the expiration of the current approval cycle. The applicant school shall submit an application to the Secretary, on a form prescribed by the Secretary, which may be updated by the Secretary from time to time, subject to any applicable requirements relative to administrative rulemaking under state law.

## 7320 Recognized Accrediting Agencies

Certain regional agencies have been recognized by the State Board of Education for accrediting purposes:

- 1) New England Association of Schools and Colleges  
Burlington, Massachusetts.
- 2) Office of Overseas Schools, Department of State, Washington, D.C.
- 3) Any accrediting entity that accredits elementary and secondary schools, that is recognized as an accrediting entity for this purpose, by the United States Department of Education.

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# BURR AND BURTON ACADEMY

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OFFICE OF THE HEADMASTER

May 9, 2016

Rebecca Holcombe  
Secretary of Education  
Vermont Agency of Education  
120 State Street, 4<sup>th</sup> Floor  
Montpelier, VT 05602-2501

Dear Secretary Holcombe:

We write this memorandum in response to your request for comment from the Council of Independent Schools regarding the State Board of Education directive to review the rules governing independent school approvals. This letter is organized as follows:

- Overview: the landscape of independent schools
- SBE Questions and CIS Feedback
- Conclusion

We look forward to reviewing this memorandum with you.

## **Overview: the landscape of independent schools**

Vermont has a rich tradition of supporting students and communities through a combination of independent schools and public schools. For certain communities, independent schools educate virtually all students, while in other locales, the public schools meet that need, at times in conjunction with independent schools. Vermont has a history of supporting local control for the schooling of its students, and this philosophy has led to diverse approaches, tailored to the needs of each community.

Indeed, the General Introduction for Independent Schools for the AOE begins with the words, *“The Vermont Legislature and the Vermont State Board of Education have consistently encouraged the development of strong independent schools.”* The final paragraph of the introduction concludes, *“At present there are a number of independent schools that reflect the variety of needs and educational philosophies that exist in the state. It is through this unique network that special needs and educational alternatives are able to flourish. The Vermont State Board of Education views these schools as an important element of our educational system offering learning opportunities to students in Vermont.”*

The independent school landscape is diverse. The overwhelming number of independent schools in the state are small – less than 100 students, with many being less than 50 students. Independent schools come in all shapes and colors. Many specialize in serving the unique needs of a particular group (for example, students with particular learning differences; emotionally challenged students; students skilled in skiing and snowboarding). Some schools focus on a pedagogical approach – for example, progressive or constructivist schools,

Montessori schools, Waldorf schools, or farm schools. Some schools, including the largest independent schools in the state, focus on serving entire communities and educate the vast majority of students across the full spectrum of needs.

Within this diversity, what these schools have in common is a mission-based approach, a commitment to serving a student population consistent with their mission, the flexibility to manage their educational approach to best serve their students, governance and fiduciary oversight driven by a board of trustees, and accountability directly to the students and families that they serve.

### **SBE Questions and CIS Feedback**

The State Board of Education provided the Agency of Education with a directive to review the approval process for independent schools. In your memorandum, you charged us as co-chairs of the Council of Independent Schools to seek input and perspective from the CIS membership on each of the issues outlined below:

- Antiquated Language
- Fiscal Accountability
- Equal Opportunity and Equity
- External Evaluation
- Special Education

On March 28, we held a CIS meeting at the Agency of Education solely and specifically to review these issues. Here are our findings:

***Antiquated Language:*** Language should be understandable. The membership fully supports updating language if it increases clarity regarding the intent of any specific rule.

***Fiscal Accountability:*** The issue in the SBE memorandum that garnered the most attention was the notion that independent schools need to show "assurance of adequate resources." The reaction among CIS members was one of confusion: what is the intent regarding any fiscal review? Are there specific financial benchmarks that are appropriate to each and every school, regardless of size or length of existence? What does "adequate resources" mean – in other words, is this an assessment of whether the school has the financial wherewithal to complete the school year, or is the intent to delve into the financial details of school operations to make a judgment about how resources are utilized? Is the SBE suggesting that debt of a certain size or a deficit of a certain size would result in loss of approved status? What would be the process for corrective action if a school was deemed to have "inadequate" resources?

Many independent schools operate on a shoestring, especially the smaller ones, and the cost of an independent audit is daunting. For others, especially those that already undergo NEASC accreditation, the accreditation process includes a rigorous financial review.

The notion that every school should submit its budget in some predetermined format, without any knowledge of what that format would be, how the data would be assessed, and for what purpose struck the membership as a one-size-fits-all approach that met with great resistance.

The group was clear regarding one specific issue: line item budget decisions need to be made by each school, and fiduciary responsibility rests with each board of trustees. Every single

school expressed a deep commitment to serving students under its mission, and it is our boards of trustees that are charged with determining whether resources are allocated appropriately.

The bottom line is that we recognize the desire to assure that each school has the financial strength to fulfill its commitment to students and families. NEASC review provides this assurance. A periodic audit could provide this assurance. However, financial assurance under this definition is limited strictly to an assurance of solvency. Any financial oversight and decision making beyond determining solvency rests with our respective boards of trustees.

***Equal Opportunity and Equity:*** This item generated a great deal of discussion with a very clear perspective: each independent school is different, unique, and mission driven. To apply a one-size-fits-all approach under the guise of “equal opportunity and equity” would be destructive to the independent school landscape. We already operate under anti-discrimination laws; this directive seems to seek to go beyond the law.

During the discussion, we went around the room and every single participant discussed the mission of his or her school, and explained how students were able to attend. There is a myth that Vermont’s independent schools are somehow “elitist,” and that myth was shattered as we heard from independent schools doing important work with a diverse range of students at the center of every decision.

The CIS recognizes the need for every student in Vermont to have access to educational opportunity. However, equal access does not mean that every single student must be able to attend every single school. This would be a gross injustice to the students themselves as it would lead to the dilution in effectiveness of so many schools. Students with extraordinary needs deserve to access education suited to those needs, and many independent schools do just that, whether those needs are emotional, physical, athletic, psychological/therapeutic, or academic. Not every public school is able to successfully fulfill the needs of every single child, and independent schools cannot accomplish this either. Independent schools do, however offer a wide range of opportunities for Vermont schoolchildren and have done so for many decades. They form an integral part of Vermont’s educational landscape. One specific comment in the CIS discussion captured this sentiment well: *the same for all does not mean the best for all.*

The CIS is committed to equity of opportunity, and Vermont’s system of school choice ensures that the opportunity to find the right school for one’s child is not limited to the wealthy. Every child, not just the most wealthy or the most educationally needy, should be able to attend the school that is best for him or her.

Ultimately, the CIS asks that the SBE recognize, and the rules reflect, that Vermont’s students and families are better off having the range of options and opportunities fostered by the existing combination of public and independent schools as a whole, while also recognizing that forcing independent schools to serve every single student would be destructive to the overall network of independent schools while decreasing the effectiveness of individual schools.

This issue was viewed as extremely important as it gets to the core of each school's ability to meet its mission.

*External Evaluation:* The membership was confused by this item. Many believed it was already being done by the Agency of Education and NEASC accreditation. We support external evaluation as a way to ensure that schools reflect on their performance in serving students according to their mission, and a strong system is already in place.

*Special Education:* This item was viewed similarly to the “equal access” item: it would be destructive to impose a requirement that independent schools serve every single student, regardless of learning or emotional needs. It is unrealistic to think that this could be done well, and it would impose a one-size-fits-all approach on an independent school landscape that exhibits educational diversity. That diversity should be viewed as a strength, not as something to be challenged.

Within the landscape of independent schools, there are many that serve students with special needs, some exclusively so. A number of Vermont’s independent schools provide services that our public schools cannot. However, many of these schools specialize in a specific need. Would this require them to serve students outside of their clearly stated mission? Would a small Montessori school be required to be approved in all special-education categories?

The CIS position is that this requirement would be counterproductive to the landscape of independent schools; we are strongly opposed to this approach.

### **Conclusion**

One cannot sit in a room with dedicated leaders of independent schools throughout the state without being struck by the commitment that each individual and each school has to serving its students well. The independent school landscape enhances educational opportunities for young people in Vermont, and any revisions to the current rules should protect this unique system, ensuring as well the opportunity for new independent schools to form in the future as our student population continues to evolve.

*It is through this unique network that special needs and educational alternatives are able to flourish.*

We are deeply concerned that the SBE rules review could undermine this unique network, reduce choices available to families, and undermine the long tradition of local control regarding educational matters. Doing so would be a huge loss for the students, families and communities of Vermont. We ask for your support.

Respectfully submitted,



Mark H. Tashjian, Headmaster  
Burr and Burton Academy  
Co-Chair  
Council of Independent Schools



Michael Livingston, Head of School  
The Sharon Academy  
Co-Chair  
Council of Independent Schools



Vermont Independent  
Schools Association

May 10, 2016

Rebecca Holcombe, Secretary  
Vermont Agency of Education  
*via email, and in-person delivery*

Dear Secretary Holcombe:

The Vermont State Board of Education (SBE) has initiated a review of the 2200-series of its rules covering independent elementary and secondary schools. Within that resolution the SBE provided guidance to you on five topics, four of which would make substantive changes to the rules.

The Vermont Independent Schools Association (VISA), an advocacy organization representing the entire community of Vermont elementary and secondary independent schools, has reviewed the SBE proposals, and submits the accompanying document which reviews each proposal in detail. Additionally we have supplied a comparison of the accredited vs. approved, two informational files concerning independent school enrollments and special education services and a summary list of NEASC accreditation criteria.

The tenor of the relationship between the independent schools community and the executive branch of Vermont state government has been on an encouraging upward trend since you took office. We commend you for your attention to independent school issues and for the constructive tone you have brought to the relationship. We very much wish those positive values to continue.

The SBE rules proposals illustrate what seems to us a misunderstanding of independent education and independent schools. The VISA and Council of Independent Schools submissions explain why the proposals are unacceptable in their current form.

We believe a dialogue in which you and your team engage with our groups to find constructive responses to the SBE's needs has reasonable potential for success.

Sincerely yours,

Mill Moore, Executive Director

Attachments: Enrollment comparisons, Special ed approvals list, NEASC standards

**INDEPENDENT SCHOOLS APPROVED FOR SPECIAL EDUCATION 8/18/15**

Independent Schools	INDEPENDENT SCHOOLS APPROVED FOR SPECIAL EDUCATION 8/18/15													
	intellectual disability	specific learning disability	visual impairment	hearing loss	speech/ language impairment	orthopedic impairment	other health impairment	emotional disturbance	autism spectrum disorder	deaf-blindness	multiple disabilities	traumatic brain injury	development delay	
Arlington School (The) was Caledonia Sch	X	X					X	X						
Baird Center	X	X			X		X	X	X					
bellcate School	X	X			X		X	X	X			X		
Bennington School	X	X		X	X		X	X			X			
Brookhaven Learning Center	X	X			X		X	X						
Burr & Burton Academy	X	X	X	X	X	X	X	X	X	X	X	X		
Centerpoint	(mild)	X					X	X						
Ch.O.I.C.E. Academy	X	X					X	X						
Community Schoolhouse		X					X	X						
Compass School		X					X		X					
Connecticut River Academy		X					X	X						
Cornerstone School	X	X					X	X						
East Meadow School		X					X	X	X				X	
East Valley Academy		X					X	X						
Fay Honey Knopp	X	X			X		X	X	X					
Foundations	X				X		X		X		X	X	X	
Greenwood School		X					X							
INSPIRE									X					
Jean Garvin School (The)	(mild)	X			X		X	X	X					
Job's Mountain Academy	X	X						X	X			X		
Kindle Farms Children Service	X	X					X	X	X					
Laraway School	X	X	X		X	X	X	X	X		X	X		
LEARN	X	X					X	X	X					
LiHigh School	X	X					X	X	X		X	X		
Long Trail School		X			X		X		X					
Lyndon Institute	X	X	X	X	X	X	X	X	X	X	X	X		
Manchester Village School	X	X			X		X	X	X					
Maple Street School		X					X							
Maplehill Community School		X					X	X						
Meadows School	X	X					X	X						
Mosaic Learning Ctr. (ALMC)	X	X	X	X	X	X	X	X	X		X	X		
Mountain School at Winhall (The)	X	X	X	X	X	X	X	X	X	X	X	X		
New School (The)	X	X			X		X	X	X		X	X		
St. Johnsbury Academy	X	X	X	X	X	X	X	X	X	X	X	X		
Sharon Academy (The)		X					X							
Sheldon Academy (VAC)	X	X			X		X	X	X					
Soar Learning Center	X	X			X		X	X	X					
Thetford Academy	X	X	X	X	X	X	X	X	X	X	X	X		
Turning Points School		X					X	X						
Village School of No. Bennington	X	X	X	X	X	X	X	X	X	X	X	X	X	

Highlighted schools are general education schools. All others are special ed-only.

Source: Agency of Education



## COMMISSION ON INDEPENDENT SCHOOLS

### Standards for Accreditation

- Standard 1 (Mission):** There is congruence between the school's stated mission and core values and its actual program, policies, planning, and decision-making at both the operational and governance levels.
- Standard 2 (Governance):** The school has an appropriate system of governance that assures that the school remains true to its mission and that it has the necessary resources to support its present and prospective operations.
- Standard 3 (Enrollment):** The admissions process assures that those students who enroll are appropriate, given the school's mission, and are likely to benefit from their experience at the school.
- Standard 4 (Program):** The school provides a comprehensive program of intellectual, aesthetic, and physical activities that is appropriate to support the school's mission and core values, and is consistent with the needs of the range of students admitted. Program planning is informed by relevant research regarding how students learn and the knowledge and capacities they will need to lead purposeful and constructive lives.
- Standard 5 (Experience of the Students):** The school actively considers individual students and has developed plans, policies, programs, and pedagogy to nurture, support, and encourage all students to reach their potential and to participate in the life of the school.
- Standard 6 (Resources to Support the Program):** Given the school's mission, there are adequate resources (space, equipment, technology, materials, and community) to support the school's program.
- Standard 7 (Early Childhood Program):** The early childhood program meets the social, intellectual, and developmental needs of its students by providing appropriate programs, adequate staffing, and sufficient resources and facilities.
- Standard 8 (Residential Program and/or Homestay Program):** The residential program and/or homestay program provide for an intentional curriculum, appropriate facilities, engaging activities, and adequate supervision to meet the needs of each student.
- Standard 9 (Faculty):** There is a sufficient number of appropriately qualified faculty to carry out the mission of the school and the school follows a comprehensive and defined program of professional development that supports continued enhancement of teachers' skills.
- Standard 10 (Administration):** The administration provides leadership and maintains a structure to facilitate the effective functioning of the school, including the participation of faculty in decision-making.
- Standard 11 (Evaluation and Assessment):** The school engages in forms of programmatic assessment consistent with fulfilling its mission and core values. This data is used to inform decision-making and planning.
- Standard 12 (Health and Safety):** The school is a safe and healthy place for students and faculty.
- Standard 13 (Communication):** The school maintains effective systems of external and internal communication and record keeping that inform all constituents and facilitate participation where appropriate.
- Standard 14 (Infrastructure):** There are adequate resources (personnel, finances, facilities, equipment, and materials) to provide for the overall institutional needs of the school.
- Standard 15 (The Accreditation Process):** The school is fully committed to institutional improvement and to the process of accreditation. The school completed an inclusive self-study, conducted in a spirit of full disclosure and following Association guidelines; responds to Commission recommendations and the requirement to meet all standards; and participates fully in the peer review process, hosting a visiting committee and sending personnel to serve on visiting committees to other institutions.

# VISA Responses to State Board of Education Rule Proposals

May 10, 2016



Vermont Independent  
Schools Association

## **SBE Proposal: Fiscal Accountability**

“The law requires the state board to assure that each school has adequate resources. The board considers that current rules are insufficient to meet this statutory requirement. The board requests that independent school financial data and budgets be submitted annually in a common statewide electronic format, that GAAP procedures be employed and that independent auditors be periodically employed.”

## **VISA Response: Existing System Works Well. SBE Proposal is Excessive.**

The reason the SBE must assure that schools have adequate resources is explicitly stated in 16 V.S.A. § 166 (b): “to meet [a school's] stated objectives.” From our perspective, the AOE's recently adopted standards for independent school financial resource review appear to be working well.

No independent school has closed unexpectedly due to financial problems in a very long time, if ever. The recent Austine School closure was not unexpected; the school had made its problems known to the state repeatedly. The sudden failure of the Vermont Center for the Deaf & Hard of Hearing was a surprise and concern about Burlington College's finances is reasonable. However, neither of these are independent schools subject to the 2200-Series rules now under review. Sudden or unexpected failure has not been a problem among independent schools.

The proposed remedy—annual submission of financial data and budgets in a common statewide format—goes beyond any reasonable need to assure that a school is capable of meeting its stated objectives. Also, common statewide electronic format reporting will be difficult to achieve in any circumstance and the agency may not have the resources needed to set up a system or monitor responses.

As independent schools are non-profit organizations, usually organized under IRS rule 501 (c) (3), their annual Form 990 financial reports to the U.S. government are public documents and are available online at no cost. The filings are quite detailed and may be entirely sufficient to assure the SBE of a school's ability to meet its stated objectives. Perhaps if schools routinely file their Form 990s with the AOE, the SBE will be more comfortable with financial matters.

**SBE Proposal: Equal Opportunity & Equity**

“Currently, the provisions for assuring equal access and admission to private schools are not sufficient. 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.”

**VISA Response: Different Standards Necessarily Must Apply for Independents**

All Vermont independent schools are prohibited by federal and state law from discriminating on the basis of protected classes and are covered by the Vermont Public Accommodations Act (9 V.S.A. § 4502), which parallels Title III of the Americans with Disabilities Act.

Unlike the public schools, which are public institutions with a mission to provide comprehensive educational programs open to all within their districts, independent schools are non-profit non-governmental organizations with different, often narrower missions.

The NEASC independent school accreditation Standard 3 requires independent schools to have enrollment policies and practices that ensure *“that those students who enroll are appropriate, given the school’s mission, and are likely to benefit from their experience at the school.”* Independent schools welcome and actively encourage a diversity of students whose values and needs align with the schools’ missions.

Conversely, a school compelled to enroll students who do not fit the school’s mission would see its mission performance undermined because it would have to focus outside of its principal intended services.

No Vermont approved independent school uses an admissions test. Schools do occasionally choose not to enroll a student, almost always because the student needs specialized services not available at the independent school. This is no different than public school finding it cannot meet the needs of a student with extreme disabilities or behavioral problems.

The Vermont independent schools that operate with a mission to educate students whose needs or learning styles have not been well served in a local public school should not be compelled to modify their programs to accommodate academically strong students. Schools such as LEARN in Lyndonville and Compass School in Westminster fit this model.

Vermont has seven winter sports academies, several of which have gained world-class recognition for their success in training and educating students. These schools should not be compelled to enroll a student who cannot meet their physical strength and ability standards or who is without interest in the school's non-academic program.

Kindle Farm School in Newfane and Laraway School in Johnson are among the independent schools that serve only students with specific disabilities. These and their peers should not be required to enroll students with different disabilities, or no disabilities. And, schools such as

Thaddeus Stevens School in Lyndon and Maple Street School in Manchester, that voluntarily accommodate a disabled students without need for formal special education services should be recognized and praised for their commitment and success.

A school that follows an educational philosophy not available in Vermont’s public schools (*e.g.*, Waldorf, Montessori, Coalition for Essential Schools) should not be required to enroll students whose needs or interests may not fit that philosophy. Vermont has several very successful Waldorf schools including Lake Champlain Waldorf which now enrolls 250 students and Orchard Valley Waldorf School in East Montpelier which enrolls 170 (both very large by Vermont independent school standards).

**SBE Proposal: Use of External Evaluators**

“The Board considers a robust external evaluation system to be essential for independent private schools which draw down public funds. The board requests that independent schools be evaluated periodically using a NEASC system.”

**VISA Response: VISA Supports NEASC Evaluation.**

VISA endorses the NEASC accreditation process as highly beneficial to schools. Thirty-seven of Vermont's 63 approved independent schools, enrolling 72% of all approved independent school students, have NEASC accreditations earned through a rigorous self-study and third-party review process.

However, the cost of NEASC membership and accreditation frequently is impractical for small schools. The approved independents without NESAC accreditation are small. Their median enrollment is 26, compared to a median of 114 for the accredited schools.

VISA currently is working with NEASC to develop a financial accreditation system that would address these schools’ needs while satisfying the AOE's requirements.

**SBE Proposal: Special Education**

“Approved independent schools shall provide special education services reasonably equivalent to those that would normally be provided in a traditional public school. The board realizes that certain schools may specialize in providing services for certain handicapping conditions, and that circumstances will vary.”

**VISA Response: Clarification Needed on Rule Intent. Rule Could Be Constructive.**

If this proposal means adding a rule that independent schools must provide special education services as state-approved special education providers, then it is not reasonable. However, if the proposal means that schools currently providing services to special education-eligible students without billing for the added service would be recognized for their work, then it is a substantial step forward that VISA will readily endorse.

Federal law places the entire responsibility for educating disabled students on students' home LEAs. Because of this, independent schools are treated very differently in statutes, particularly if a school has not sought state approval to bill for providing special education services.

Some Vermont independents now successfully accommodate special education-eligible students without need for special education-certified teachers or for billing for added services. This accommodation usually is a result of a school's capacity to provide greater individualized attention to students and of the skills of a school's faculty and administrators. The schools that perform these services have gone without recognition. A rule that promotes such recognition would be very worthwhile.

On the other hand, a rule requiring independent schools to be state-approved to provide new services would impose an unfunded mandate. Schools without adequate physical spaces would need to build new facilities. The current AOE/SBE process by which independent schools seek special education approval is challenging and costly, particularly for schools first entering the process. Also, smaller independents might find dealing with the bureaucratic and occasionally litigious nature of special education to be more than they reasonably can bear.

Adding new special education capacity in an era of declining school enrollments may be counter-productive statewide. Availability of qualified special education instructors to staff expanded programs is questionable.

**Proposed Rule Change:**

SBE Rule 2226 opens with the statement: "The Board may approve an independent school if it finds that: ..."

VISA proposes that the word "may" be replaced by the word "shall." This change will make Rule 2226 consistent with the wording in the first sentence of 16 V.S.A. 166 (b) which begins: "On application, the Board **shall** approve an independent school ..." [*emphasis added*].

**Conclusion: Independent Schools Are a Positive Resource.**

The success of independent schools fundamentally is tied to their ability to be different and to provide opportunities to Vermont students to experience services and educational philosophies unlike those of the public education system. Schools such as St. Johnsbury Academy, Green Mountain Valley School, Rice Memorial High School, the Vermont School for Girls, Putney School, Hilltop Montessori School, Kurn Hattin Homes, Thaddeus Stevens School and

Greenwood School are examples of the range of services and diverse educational philosophies available in the Vermont independent schools community that are unavailable anywhere in the Vermont public system.

Commenting on the benefits of diverse opportunities, the head of a Vermont independent high school that serves struggling low-achieving students recently wrote: *“Beyond special education and other support services, students not successful in a given school take up time for administration and teachers with evaluations, discipline meetings, creation of special plans and programs and other disruptions to what should be a purposeful and focused, high quality educational program. **There is nothing either cost effective or equitable about this for students whose learning style or needs may be incongruent with their local school’s approach, and the struggles it inevitably results in for these children are predictable.**”* [emphasis added]

*The Vermont Legislature and the Vermont State Board of Education have consistently encouraged the development of strong independent schools. Indeed, the State Department of Education, State Board, Legislature and many citizens cooperated in 1988-89 in re-writing 16 V.S.A. § 166. These new changes became effective as of July 1, 1990.*

— Vermont Independent School Guide, May 2009

The general thrust of the SBE proposals is to make approved independent schools operate more like the public schools and to imply that independent schools have unmet duties to students and the state. This thrust, which runs counter to explicit state policy is counter-productive and is an improper characterization.

We invite the SBE to engage constructively with the independent schools community on these subjects, instead of immediately invoking a new rules process. We ask the SBE to recognize that independent schools are a different kind of educational institution operating in an educational environment substantially different from the public schools. The independent environment is characterized by voluntary student attendance (school choice), flexibility to adapt curriculum and faculty to student and community needs and providing a range of opportunities often unavailable in the public system. The SBE should support and encourage the benefits flowing from that difference.

Finally, the AOE and SBE must decide if more recognized and fewer approved independents are in the public interest. One should not assume all approved independent schools will choose to comply with rules that are financially intrusive, that eliminate control of enrollment policy and require more special education services. Some schools will instead choose to shift from *approved* to *recognized* status. Recognized schools operate with much less SBE or AOE oversight and are not responsive to availability of any public funds.

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## VSBA Resolution on Public Funds to Independent Schools

**INDEPENDENT SCHOOL FUNDING** The VSBA supports limitations to ensure that public funds are used to support only independent schools that are approved to and do provide education services to students with specific learning needs or that provide services to all segments of the student population regardless of their needs.

# VERMONT

## SCHOOL BOARDS ASSOCIATION

.....

*Great Governance, Excellent Education, Strong Communities*

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To: The Vermont State Board of Education  
From: Nicole Mace, Executive Director  
Date: July 11, 2016  
Re: Independent School Approval Standards

Public dollars that support private schools should carry with them the same obligations regarding quality, equity, efficiency, transparency and accountability (the Act 46 goals) that apply to public school districts.

With those goals in mind, the Vermont School Boards Association (VSBA) recommends that the revised State Board of Education (SBE) rules for independent school approval:

- Establish quality standards at least equal to those required in public schools,
- Require open enrollment policies and procedures to guard against discrimination towards any protected class of student,
- Ensure transparency regarding the implementation of these policies and procedures and use of public dollars, and
- Include mechanisms to enforce accountability.

More specifically, the revised rules should state that for an independent school to be eligible to receive public education funds, the school shall:

- Not discriminate or deny enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, gender identity or disability
- Operate with an open admissions policy, meaning that it accepts all publicly-funded students on a space-available basis
- Be approved for special education services in *at least* four categories and arrange for special education services related to *any* disability category if required in an enrolled student's individual education plan
- Administer state assessments and make outcomes data available to the public in the same manner as public schools
- Provide free and reduced lunch to all eligible students
- Employ teachers and administrators that have licenses and endorsements required by professionals working in public schools

Finally, given the state's interest in maintaining a viable system of public schools, the rules should also state that the SBE will not approve a new independent school that was previously the public school for the same grades in the same school district.

### **Background and Rationale:**

Vermont is one of only two states that allow towns lacking an elementary or secondary school to pay tuition for their students to attend another public or private school. A unique feature of Vermont is that students may also take their "town tuition" to a school out of state.

According to data from the Agency of Education, 5,390 Vermont students participated in the town tuitioning program this year, representing close to 7% of total state public school enrollment. Of those 5,390 students, more than half use their voucher to attend a private school or academy. Nationally, voucher participation represents less than 1/2 of 1% of the total school-age population (Center for Public Education, 2015).

**This means that the use of tuition vouchers in private schools in Vermont is seven times the national average. This is significant, given the declines in Vermont's student population over the past two decades and the state's policy interest in keeping public schools viable.**

Like school voucher programs, town tuitioning provides taxpayer dollars to students that they can use to pay for public or private school. Eligibility in Vermont is open to all students who are residents of a tuition paying town. However, there is no requirement that private schools accepting public tuition dollars admit all students from tuitioning school districts who wish to attend.

The Vermont tuitioning system is an outlier in many respects, most notably in its long history and the ability to carry vouchers across state lines and even national borders. **Vermont also has minimal accountability for student performance for independent schools receiving public dollars, whereas the trend across the country is to establish performance indicators for schools accepting vouchers** (Center for Public Education, 2015).

**Independent schools that are the recipients of public dollars under Vermont's tuitioning construct do not have to follow the same requirements as public schools, and often do not serve the same**

**students that public schools do.** Data prepared by the Agency of Education in January of 2016 illustrate that while 40% of students in Vermont public schools are eligible for free and reduced lunch, just 28% of publicly-funded students attending independent schools and 25% of publicly-funded students attending one of the four academies (St. Johnsbury, Burr & Burton, Thetford, and Lyndon Institute) are FRL-eligible.

**Most independent schools offer minimal categories of special education, if any, and some require families to contribute to the costs of special education services out-of-pocket.** Some independent schools bill the sending school district for the costs of special education services, over and above the amount paid for tuition. Two-thirds of the independent schools with more than 30% publicly-funded students are not approved to provide special education services in all areas – many of these schools are not approved to provide any special education services.

**Independent schools are also free to set tuition rates that vary from town to town.** While public school districts must offer the same tuition terms to all sending towns, independent schools are exempt from this rule (16 V.S.A. 824). Independent schools' tuition is the average announced tuition of union high schools *except* in towns where the electorate approves a higher tuition amount. In these towns, the higher tuition voted by the electorate pays the full tuition for resident students.

**In towns that do not authorize tuition payments over and above the average announced rate, parents are often responsible for paying the difference.** In some independent schools the difference can be paid out of school-operated scholarship programs. The extent of this practice and of parent-paid tuition is unknown as independent schools are not required to disclose their financial data.

**Other states do not have the same expansive voucher model as Vermont.** In states that do allow public dollars to fund private schools, vouchers are typically tailored to serve students that attend a neighborhood school that has been deemed “failing” and who demonstrate financial need. Many of these systems rely on tax credits or scholarships that are funded by revenue from the state’s general fund. Despite the limited scope of these programs, most states have clear standards for private schools before those institutions can receive public education dollars, including nondiscrimination requirements.

**Finally, there are a host of legal questions surrounding the current practice of allowing public funds to go to private institutions that do not adhere to the same non-discrimination and accountability standards that apply to public school districts, including whether such a construct violates the Education and Common Benefits Clauses of the Vermont Constitution or the Vermont Public Accommodations Act.**

As the Vermont Supreme Court stated almost twenty years ago, “In Vermont, the right to education is so integral to our constitutional form of government and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification.” (*Brigham v. State of Vermont*)

**We see no justification for a system that allows private institutions to selectively determine which publicly-funded students they will serve.** Therefore, the VSBA strongly urges the State Board of Education to ensure that the independent school approval rules reflect the state’s commitment to educational equity and non-discrimination by expressly prohibiting practices such as selective enrollment policies and by ensuring independent schools are held to the same quality standards as public schools.

Cc: Rebecca Holcombe, Secretary of Education  
Gregory Glennon, General Counsel, Agency of Education

# **Attachment B**

## **Minutes of July 29, 2016 SBE**

**July 29, 2016**

*Strategic Goals: (1) Ensure that Vermont's public education system operates within the framework of high expectations for every learner and ensure that there is equity in opportunity for all.*  
*(2) Ensure that the public education system is stable, efficient, and responsive to changes and ever-changing population needs, economic and 21st century issues.*

**MINUTES**

**Present**

**State Board of Education (SBE):** Stephan Morse, Chair; Sean-Marie Oller, Vice Chair; Peter Peltz; William Mathis; Mark Perrin; Bonnie Johnson-Aten; Rainbow Chen (via conference call) Student Member; Connor Solimano, Student member non-voting.

**Agency of Education (AOE):** Rebecca Holcombe, Clare O'Shaughnessy, Judy Cutler, Donna Russo Savage, Haley Dover, Amy Fowler, Maureen Gaidys.

**Others:** Christopher Leopold, Wells and Leopold; Nikki Smith, Wells and Leopold; David Chabot, Vermont School for Girls (VSG); Jeff Caron, Vermont School for Girls (VSG); Mill Moore, VT Independent Schools Association; Nicole Mace, VSBA; Jeffrey Francis, VSA; Jonathan Wolff, Primmer/Lyndon Institute; Tiffany Pache, VTDigger; Laura Pelosi, SSA/BBA; Clare Buckley, KSE Partners on behalf of VISA; Mary Collins, VT HITEC.

**Item A: Call to Order**

Chairman Morse called the meeting to order at 9:40 a.m. He announced that Board member Krista Huling was not present and that her absence is excused – she delivered a daughter on Monday. Congratulations were extended to Huling and her family.

**Item B: Public to be Heard**

David Chabot, director of legal affairs for Becket Family Services, an affiliated group that consists of several corporations, one of which is Vermont Permanency Initiative, Inc. (VPI), the operator of Vermont School for Girls. He introduced Jeff Caron, President of VPI who respectfully requested that the Board not act prematurely and give VSG an opportunity to be heard.

Mathis suggested that Chabot and Caron be heard from in a separate executive session.

Chairman Morse announced that should the motion to go into executive session pass, the Board would first hear from the AOE, and then invite in other parties who might have thoughts and information to share, prior to making a decision in open session. There were no other members of the public to be heard.

### **Item C: Consent Agenda**

**Motion:** Vice Chair Oller moved to approve the consent agenda as presented. The motion was seconded by Perrin.

**Vote:** The vote passed unanimously.

Specifically, the items approved were: Item C – Consent Agenda

1. Minutes – June 20, 2016 SBE Retreat
2. Minutes – June 21, 2016 SBE Meeting

### **Item D: Board Members Announcements and Student Representatives Emails**

Chen announced that she has voting privileges now as she moves into the role of voting student member. She apologized for being absent and explained that she was in Little Rock, Arkansas for the Noble Educators Summit, a professional development conference. She shared that Vermont has gotten a huge reputation boost at the conference for the work we are doing and for its commitment to student voice on the State Board of Education. Chen added that earlier in the month, she and Solimano were invited by Up for Learning to attend an international seminar. This was an incredible conference and a wonderful learning experience. She added that we are in good hands with Solimano.

Mathis shared that he, Chairman Morse, and Perrin met with the Scott Thomas, the new dean of Education and Social Services at UVM. It was a delightful visit and he really wants to reach out and work with schools and believes that there is a lot we can do with research and school improvement work. Chairman Morse acknowledged that this is the first time that the UVM has reached out to the SBE and found this very welcoming. Secretary Holcombe added that UVM also reached out to her when hiring for this position, and she was extremely impressed by Dr. Thomas.

### **Item E: Chair's Report**

Chairman Morse welcomed and congratulated Solimano on his position as the new student representative to the Board and asked him to give some brief background on himself. Solimano shared that is he very excited to be part of the Board - he is a rising junior at Rutland High School, is very involved in community and school, serves as the class secretary, the elected student school board representative, and participates in year round sports (cross-country, indoor track and tennis) and community service. Secretary Holcombe added that his reference checks were amazing and that no one could say enough good about him.

Chen excused herself from the meeting so that she could participate in her conference.

### **Item F: Secretary's Report**

Secretary Holcombe announced that this would be the last meeting with in-house videography. The delay is partly due to the procurement process - there was an RFP and bidding process. A decision has been made and the new vendor will be announced at the next Board meeting.

Secretary Holcombe distributed a document that showed the parallel processes between the EQS and ESSA conversations and the elements of state accountability/state goals board decisions and how they shape the work on federal goals. AOE is trying to systematically work from SBE decisions towards federal plans, to the extent possible.

Peltz asked if we were still on hold with state initiatives. Secretary Holcombe stated that we stopped doing the last pilot of the Field Reviews, due to a need to reassess work with the passage of ESSA, but will resume the Integrated Field Reviews this fall. She noted also that the AOE took time to reorganize some of its work groups around the Board's Education Quality Standards.

AOE has also been focused on reviewing ESSA draft regulations and providing formal feedback to the U.S. Department of Education prior to the deadline of August 1, 2016.

**Item: G – Committee Reports**

There were no committee reports.

**Motion:** Mathis moved to discuss the status of VSG in executive session; this was seconded by Peltz.

Before a vote was taken, Chairman Morse shared the procedural matters for this executive session: there would be a 5-minute break, following which the Board will hear what is presented by the Secretary's Office, then representatives from VSG will be invited to speak.

Chairman Morse asked if there were any further points of view for presentation during executive session. Ken Schatz, Commissioner for DCF, introduced himself and stated that he too, has regulatory authority over VSG.

Chairman Morse stated that the Board will hear from the Agency, then Schatz, then VSG representatives. This will all be in executive session and each party will be invited and heard separately.

**Vote:** The vote passed unanimously. A five minute break was called before going into executive session

**Item X: Executive Session**

The Board entered Executive session at 10:06 a.m.

At 11:27 a.m., Chairman Morse called the Board to order and they resumed their regular Board meeting.

**Item Z: Vermont School for Girls**

**Motion:** Johnson-Aten moved that the State Board approve the said letter to Vermont School for Girls and authorize the Chair to sign and send such letter. This motion was seconded by Mathis.

Discussion: Oller announced that she would be abstaining from voting on this motion because she lives and works in the community of Bennington, and while there is no perceived conflict of interest, she feels that abstention is appropriate. Chairman Morse called a roll-call vote.

**Roll Call Vote:** Yea - Perrin, Peltz, Mathis, Johnson-Aten, Morse; Nay - None. Oller abstained from the vote. The motion passed unanimously and this letter will be signed and mailed today.

Chairman Morse advised that there is one typo in the draft letter that needs to be corrected. He suggested that since Caron and Chabot had travelled to be present that they might be interested in seeing the letter. Chairman Morse asked that O'Shaughnessy provide a copy of the draft letter to these interested parties from VSG and follow-up later with the corrected, signed version.

**Item H: Act 46 Update - Draft guidance for alternative structures and mergers – Donna Russo-Savage**

Russo-Savage noted that [draft guidance for alternative structures and mergers](#) should have been received by Board members and she walked them through her Power Point presentation.

Highlights from the presentation:

The deadline for proposed accelerated mergers has passed. Over the next two or so years, the Board can expect to be dealing with the second and third phase of incentivized merger proposals. There is also a requirement that districts that are not merging into a preferred structure self-evaluate, meet with other districts in the region and submit a proposal that accommodates their diversity of district structures. Finally, there is a requirement that by November 30, 2018, the State Board issues a statewide plan that merges or clusters distinct district structures together to have a seamless governance structure.

Although Act 46 acknowledges alternate structures, the only place that it indicates that they are reviewed or considered is in the creation of a statewide plan. There is not a separate process.

At the annual retreat, the Board focused on similar issues and determined that although Act 46 contemplates this, it doesn't provide much guidance. The Board requested that the Agency draft both rules and guidance for alternate structures and a guidance document for mergers going forward. Guidance document is based on what information is available in Act 46 and the analysis and discussion from the Board retreat.

Russo-Savage walked through the guidance document.

It is important to note that under merger law there is a creation of a separate study committee. Page 3 (of the guidance document) acknowledges that not all merger discussions will lead to successful mergers, but that there might be a lot of information collected and analysis completed during the discussion of a potential merger that might subsequently inform a proposal for an alternate structure.

Act 46 only considers alternative structures in the creation of the statewide plan.

Also important at the top of page 4: There is nothing in Vermont law or otherwise that would require the Board to incorporate these proposals. The Board can consider alternative structure proposals and decide on something else that makes more sense in the creation of the statewide plan.

Page 4 likely has the strongest statement, “Act 46 also provides: The State Board shall approve the creation, expansion, or continuation of a supervisory union *only if the Board concludes that this alternative structure: (1) is the best means of meeting the [Goals] in a particular region;*”

There is some overlap on pages 6-9; this is so that concerns raised could be addressed at different angles. These points cumulatively suggest that the burden to prove that any alternative structure proposal has been carefully vetted and the rationale substantiated is on the school boards, not on the State Board.

Chairman Morse clarified that the Board was being asked to approve this draft guidance. Russo-Savage responded that the hope was that the guidance would be approved if it captured what was requested by the Board. If so approved, the Agency would come back with proposed rules in August. Chairman Morse asked what the time line would be and if the rules statute would fall within the statutory timelines, and received an affirmative response.

Peltz commented on the work that was put into this and noted that it is new ground and the guidelines will be very helpful in moving this along and gaining efficiencies. He questioned the \$5K for study grants and asked for clarification that unless you are forming a union, the \$20K cannot be accessed. Russo-Savage asked to get back to him on that. Peltz said there’s a lot of work to be done and not a lot of funding for this. Russo-Savage reiterated that a lot of this work could be done by the study committee. He asked about small schools grant and expressed concern that there is a very tight timeline; Russo-Savage acknowledged that this is why this guidance and rulemaking on small school grants is being requested in advance by the Board, so that it could be shared with districts in a timely way.

Mathis stated that the guidance is very faithful to what the Board wanted and the sooner it gets out, the better. He questioned page 4, letter D (of the guidance document) at the top where it says, “*Nothing in Vermont law requires the Board to incorporate a non-merging district’s proposal into the final statewide plan. Similarly, nothing requires that an alternative structure included within the final statewide plan is the same as a proposal presented by a non-merging district or group of districts...*” and asked for clarification that if there was a plan that leaves an orphan, the Board can change that.

Russo-Savage said that was correct but, the Board is not going to be reacting to these proposals before preparing a statewide plan. Mathis said this is a potential problem because reversing a decision would be a problem. He asked if the Board could still change the boundaries if an unfortunate situation arose. Russo-Savage said that under this structure, the Board would have

total authority to change supervisory boundaries pursuant to long-standing statutory law, and could after the fact, redraw the supervisory boundaries.

Peltz noted that the Board needs to look at this from the statewide perspective which the local districts might not have.

Mathis had a second point on page 9, number 11 of the guidance document where it reads: In what ways does the proposal demonstrate that a preferred, unified system “may not be 1 possible or the best model to achieve” the Goals in the region <sup>1</sup> (*i.e.*, that “it is not possible or 1 practicable” to merge some or all of the included district(s), where necessary, into a preferred, unified structure while also adhering to the protections for tuition-paying and operating districts; or otherwise meeting all aspects of the preferred, unified system <sup>2</sup>)?

He would like the placement of that to be more prominent. It was agreed that its placement would stay and that Mathis would be content to have it bolded. On page 10 of the guidance document, under 261(b), the voting requirement – Mathis asked if this could this be spelled out since he was worried that people wouldn’t know what “261 (b)” means.

Russo-Savage noted that is guidance, and that the rules will get into the data and what the districts have access to. The next step for her is to speak with the data folks at the Agency.

Nicole Mace, VSBA introduced herself. Mace thanked the Board for their leadership and the Agency for their work of putting this into writing and aligning the guidance and Act 46 and the previous conversation of the Board. There is a lot being expected of local school boards – it puts the burden on these school boards and this sets the bar high. She said that her hope is that the AOE will be able to provide the data, specifically data related to EQS, that is needed to evaluate – and that if this could be available very soon, that would be helpful. The VSBA plans to use their regional meetings this fall to get feedback from members on the draft rules so that Board can collect good feedback from the VSBA.

Chairman Morse offered the Board’s help in collecting feedback. Johnson-Aten stated that she appreciates that the bar is set very high – and she agreed that alternative structures should be the exception. Mathis asked what criteria and numbers would be used in the rules. He does not want the Board to be too tightly limited and not adaptable to other situations. Russo-Savage anticipates that the Board will be looking at the entire picture.

**Motion:** Chairman Morse reiterated Peltz’s motion that the Board accept the Agency draft of guidance proposal for one or more non-merging districts for alternative structure under Act 46 with the two minor changes suggested by the Board. Oller seconded this motion.

**Vote:** This motion passed unanimously.

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<sup>1</sup> Sec. 5(c)

<sup>2</sup> Sec. 10(a)

**Item I: Post-Secondary Rules Update – Draft – Clare O’Shaughnessy**

O’Shaughnessy shared that the Board is being asked to authorize the Agency on the Board’s behalf to present the proposed rule changes for post-secondary rules to LCAR. The period for public comment ended on June 27, 2016. There was no public comment or attendance at the scheduled public hearing. Chairman Morse asked for a motion. Oller moved, this was seconded by Johnson-Aten.

Mathis asked for a summary of changes. The main changes are that post-secondary institutions applying for approval to operate in Vermont will be required to undergo NEASC accreditation. There are no pending applications. Other than that it is updating antiquated language (Commissioner to Secretary). The statutory fees are incorporated into the rules and the Agency no longer conducts the reviews. There are no pending applications.

Mathis asked if there were periodic reviews for accreditation. O’Shaughnessy reported that this did not change and that when the Board grants degree or credit-bearing approval to an institution, the initial period is not to exceed 5 years or whatever terms and conditions the Board may set.

Chairman Morse asked about consistency. He cited 2241.3 – where it states “filing an application within 18 months of admitting the first student.” He then cited 2242.2 where it says “file an application prior to admitting students.” He asked if these were two different things – and if this was consistent.

Chairman Morse suggested a lunch recess and that O’Shaughnessy could review the two sections and report back on this query after lunch.

Mathis asked for a list of institutions affected, if available.

Chairman Morse called a recess for lunch at 12:08 p.m. He announced that the regular Board meeting would reconvene at 12:45 p.m.

Chairman Morse reconvened the regular Board meeting at 12:47 p.m.

O’Shaughnessy explained that the difference in the two sections and apparent inconsistency had to do with whether or not the applicant institution was operating in Vermont or an out-of-state institution. The rule permits 18 months to an in-state institution so as to not discourage a business from operating in Vermont.

O’Shaughnessy reported that the rule would have affected the Center for Cartoon Studies (degree granting) and an on-line based school, Oplerno (credit bearing) and that both are grandfathered and allowed to carry on as usual. Both entities can remain status quo under the rule changes. AOE reached out to Oplerno regarding the rule change and received no comment.

**Motion:** Chairman Morse reiterated the motion by Oller that was seconded by Johnson-Aten, to accept agenda item I and authorize the Agency on the Board's behalf to present the proposed rule changes for post-secondary rules to LCAR.

**Vote:** This motion passed unanimously.

**Item J: Rules Update – Independent Schools – Clare O’Shaughnessy**

O’Shaughnessy noted that the Board has received an extensive packet of information and proposed revisions. The Board tasked the Agency in November 2015 to engage in a comprehensive review of independent school rules and proposed revisions to those rules. The Board also asked for a proposed timeline and in December the Agency presented the Board with a proposed timeline for the adoption of proposed rules. If the Board votes to go forth with proposed rules and presuming that rules can get before ICAR in August, the first public hearing would be no sooner than September 30, 2016. The Agency proposes to have no less than 3 public hearings on the proposed revision to the rules with a view towards doing that regionally – northern, central and southern parts of the state. At a rapid pace, those meetings could be convened and completed in October. The rules cannot go to LCAR until 7 days after the close of the public comment period. At best, we would be looking at a November date to return to the Board to go to LCAR in December.

Chairman Morse noted that we are at the very beginning of the process and was not sure that folks need to feel the need to give public comment today as there will be ample opportunity for that. He was hopeful that there would be no major conversation today, but it was agreed that the Board would hear from Mill Moore.

Mill Moore introduced himself. He shared that he had written a letter on behalf of his association to Chairman Morse and wanted to place this letter on the public record. His letter can be found here: <http://education.vermont.gov/documents/edu-sbe-moore-letter-item-j-072816.pdf>.

He requested that the Board not move to a vote on the Board's July 29 meeting on item J, independent school rules proposals prepared by the Agency of Education. This request if made for two reasons: 1) of evidence of likely rule implementation problems and 2) questions about the enforceability. Because of these problems and concerns it was respectfully requested that the Board defer action until all interested parties are fully prepared. It was also requested that Board set a process for the Agency, the Board and the independent schools community to have a dialogue about policy goals and implementation procedures.

Chairman Morse noted that Mill referenced the use of the word "I". Moore stated that this reflects his association's position. Morse asked if it was approved by his Board of Directors. Moore said yes.

There were no other questions or comments.

**Motion:** Oller moved to authorize the Agency of Education to pre-file the proposed revised amendment of state rule series 2200, section 2230.4, private education programs including

distance learning schools, correction education tutorial programs and private kindergarten programs, and rule 7000 series, rule 7320 only, with ICAR for review by ICAR to begin the administrative rulemaking process. This was seconded by Johnson-Aten.

Discussion: Oller asked if there were comments or questions from the Board, if there could be a process between now and November to have the Agency reflect on these questions. Secretary Holcombe offered to have the Agency put together a proposal for a process, submit it to Chairman Morse to review and act based on that to make sure that there are opportunities beyond what is in the statutorily defined process for the Board to process and hear feedback. Chairman stated that we would need to be cautious to not interfere with the rulemaking process.

Mathis concurred with Oller's remarks. Mathis asked Moore to explain offline the religious and court decision piece and why he thinks this violates Title IV.

Chairman Morse called a roll call vote.

**Roll Call Vote:** Yea - Oller, Johnson-Aten, Mathis, Peltz, Perrin, Morse; Nay – None. The motion passed unanimously. The independent school rulemaking process has been initiated.

**Item K: Burlington College Records - Clare O'Shaughnessy**

Chairman Morse noted that there was new information on this particular issue and that there might be a need for executive session.

**Motion:** Oller moved to go into executive session for the purpose of having confidential communications with the Attorney General's office on legal matters pursuant to V.S.A. § 313 (a)(1)(f). Johnson-Aten seconded.

**Vote:** The motion passed unanimously.

Chairman Morse called the Board into executive session at 1:00 p.m.

Chairman Morse reconvened the regular Board meeting at 1:33 p.m.

Chairman Morse announced that Burlington College has closed and under section 16 V.S.A. 175, the Board has the responsibility for maintaining the academic records for students who attended this college. There have been some issues figuring out the proper repository for those records. The Board has been assisted by the Attorney General's office and hopes today to come to some resolution on this.

**Motion:** Oller moved to have the Board vote to authorize the Agency to take temporary possession of Burlington College's academic records and certain other records until a permanent repository is appointed, to ensure the proper storage, availability and disposition of these records in accordance with all legal requirements, and further that the Board vote to

authorize the Agency to allow other entities to have access to a student's records consistent with all legal requirements, when allowing access is in the best interests of that student.

Peltz seconded the motion. Chairman Morse asked if there was any further discussion. Oller thanked the legal department and the Agency for trying to work out the details in this matter. Morse noted for the record that once again the Agency is being called upon to provide an additional service that is not being funded by the state of Vermont so there is even more budget pressure for the Agency. Chairman Morse called a roll call vote.

**Roll Call Vote:** Yea - Oller, Johnson-Aten, Mathis, Peltz, Perrin, Morse; Nay – None.  
The motion passed unanimously.

**Item L: ESSA**

Chairman Morse asked Mathis to lead the discussion on two items: Board guidance to the state on ESSA and the Board letter to Secretary King regarding ESSA. Mathis shared that these two items were discussed this last month and a couple of drafts have been circulated since then and they are likely ready for action.

**Motion:** Oller moved to accept both letters of the Board in item L, one to the education community and one to Secretary King regarding ESSA; the motion was seconded by Perrin.

**Vote:** The motion passed unanimously.

Secretary Holcombe verified that the Agency would submit the letter to King and send it on the Board's behalf and also submit it through the online collector. The Agency will also format the guidance letter and send it to the field and education partners.

The timing of the letter to the field was discussed. Oller suggested waiting until mid-August so that all would have it. Secretary Holcombe suggested sending it earlier and no later than mid-August since beginning of year packets would already be prepared.

Mathis complimented Haley Dover on the news clips that she sends to the Board as he finds them very helpful and feels that they serve a valuable function.

Chairman Morse noted that the financial report shows a surplus of \$20K for the Board last year.

Chairman Morse acknowledged that this had been a pretty incredible meeting and that a lot of important topics were covered and that everyone's contributions were appreciated. He offered that he expected a lot of media coverage and reminded the group that they had two executive sessions and that those conversations are not allowable for further discussion with anyone. He further offered a general comment that in dealing with the media the offering of 9 different opinions is not that helpful. Board meetings are very open and the hope is that people would use the meetings as a format instead of the media.

Oller confirmed that the next meeting is August 23, due to Bennington Battle Day – and then September 20, October 18, November 15 and December 20. Secretary Holcombe confirmed that

the August meeting is here in Barre and the September meeting will be at St. Johnsbury Academy.

Chairman Morse noted that the Board photo needs to be updated for the web. The Agency will coordinate to have a new photo taken at the next Board meeting.

Chairman Morse asked if there was any further discussion. There was none.

**Motion:** Peltz moved to adjourn the Board's July meeting. Oller seconded this motion.

**Vote:** The motion to adjourn passed unanimously. The meeting adjourned at 1:44 p.m.

Minutes recorded and prepared by Maureen Gaidys

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## **Attachment C**

### **Agenda Packet for August 23, 2016 SBE Meeting**

The current month's meeting agenda and packet materials may be accessed electronically.

*The SBE's Strategic Goals are to ensure that Vermont's public education system operates within the framework of high expectations for every learner and ensure that there is equity in opportunity for all and to ensure that the public education system is stable, efficient, and responsive to changes and ever-changing population needs, economic and 21st century issues.*

- Draft Agenda -			
9:30 a.m.	A B C D	<b>Preliminaries</b> Photo Shoot of SBE for the Webpage Call to Order - Stephan Morse, Chair Oath of Office to Student Voting Member, Rainbow Chen Public to be heard Consent Agenda	DISCUSS/VOTE
10:00 a.m.	E F G H	<b>Updates</b> Board Announcements & Student Representative Emails Chair's Report - Stephan Morse Secretary's Report – Rebecca Holcombe Committee Reports - Bill Mathis, Mark Perrin	DISCUSS DISCUSS DISCUSS DISCUSS/VOTE
10:30 a.m.	I	<u><b>CTE Decision</b></u> Heather Bouchey, Deputy Secretary of Education	DISCUSS/VOTE
11:00 a.m.	J	<u><b>Draft Proposed Rules on Alternative Education Structures</b></u> Donna Russo-Savage, Agency of Education	DISCUSS/VOTE
11:45 a.m.	K	<u><b>Draft Guidance on Mergers</b></u> Donna Russo-Savage, Agency of Education	DISCUSS/VOTE
12:00 p.m.		<b>LUNCH – Invitation only</b>	
12:45 p.m.	L	<b>Burlington College Update</b> Clare O'Shaughnessy, Agency of Education	DISCUSS/VOTE
1:30 p.m.	M	<u><b>Federal Update</b></u> Amy Fowler, Deputy Secretary of Education	DISCUSS/VOTE
2:00 p.m.	N	<u><b>Aligning Agency Structure and Website around EQS</b></u> Team EQS (Pat F, Tracy W, Heather B, Stephanie, Josh S.)	DISCUSS
2:30 p.m.	O	<b>SBE Rule 2200 Series Update</b>	DISCUSS/VOTE

*Indications of time on the agenda are best estimates, and therefore may not reflect actual time an item is addressed. We will do our best to address items within the time indicated and extra effort will be made to adhere to the time indicated for public hearing and voting items.*



VERMONT STATE BOARD OF EDUCATION  
Agency of Education  
219 North Main Street, Suite 402  
Barre, VT 05641

August 23, 2016

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If you wish to remove an agenda item  
for further discussion, please notify  
[Suzanne.Sprague@vermont.gov](mailto:Suzanne.Sprague@vermont.gov) (802)479-1030

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### Item C – Consent Agenda

1. 1 Minutes – July 29<sup>th</sup>, SBE Meeting
2. 1 Stone Path Academy – Initial General and Special Education Independent School Approval
3. 1 Pacem School – Renewal of General Education Independent School Approval
4. 1 Thaddeus Stevens School – Renewal of General Education Independent School Approval
5. 1 New School of Montpelier – Renewal of General and Special Education Independent School Approval
6. 1 Sheldon Academy – Renewal of General and Special Education Independent School Approval
7. 1 Addison County Parent Child Center’s Teen Parent Education Program – Renewal of Other Education Program Approval
8. 1 Brook Street Family Literacy Center’s Teen Parent Education Program – Renewal of Other Education Program Approval
9. 1 Rutland County Parent Child Center’s Teen Parent Education Program – Renewal of Other Education Program Approval
10. Brookhaven Treatment and Learning Center – Amendment to Special Education Independent School Approval

## **Attachment D**

### **Minutes of August 23, 2016 SBE Meeting**

**August 23, 2016**

*Strategic Goals: (1) Ensure that Vermont's public education system operates within the framework of high expectations for every learner and ensure that there is equity in opportunity for all.*  
*(2) Ensure that the public education system is stable, efficient, and responsive to changes and ever-changing population needs, economic and 21st century issues.*

**MINUTES**

**Present**

**State Board of Education (SBE):** Stephan Morse, Chair; Sean-Marie Oller, Vice Chair; Peter Peltz; William Mathis; Mark Perrin; Bonnie Johnson-Aten; Krista Huling; Rainbow Chen, Student Member; Connor Solimano, Student member non-voting.

**Agency of Education (AOE):** Rebecca Holcombe, Clare O'Shaughnessy, Donna Russo-Savage, Haley Dover, Amy Fowler, Heather Bouchey, Bill Talbott, Cassandra Ryan, Jay Ramsey, Suzanne Sprague, Stephanie Brackin, Pat Fitzsimmons, Tracy Watterson, Lori Dolezal.

**Others:** Kevin Dirth, Franklin Central Supervisory Union Superintendent; Rachele LeVau, Fairfax; Bailey Halliday, Fairfax; Kathy LaVoie, FGI Workforce Investment; Judith DeNova, Chittenden Central Supervisory Union Superintendent; Carolyn Dickinson, Center for Technology, Essex; Leeann Wright, Northwest Technical Center; Lisa Durocher, Northwest Technical Center; Bob Travers, Center for Technology, Essex; Colin Flanders, Essex Reporter; Matt McMahon, MMR; Ken Page, Vermont Principals' Association; Erik Goodling, Strafford School Board Chair; Sandra Baird, Burlington Citizen, Christopher Leopold, Wells and Leopold; Mill Moore, VT Independent Schools Association; Jeffrey Francis, VSA; Nancy Cornell, Starksboro; Martha Tucker, Stone Path; Ben Palkowski, Primmer/Lyndon Institute; Tiffany Pache, VTDigger; Clare Buckley, KSE Partners; Tracy Racicot, Burlington Technical Center; Josh O'Gordon, Act 46 Implementation Project; Tom Davis, VT HITEC; Julie Davis, VT HITEC; Rama Schneider, Williamstown; Ned Kirsch, Franklin West Supervisory Union Superintendent.

Group photo for the web site was taken by Haley Dover, Agency of Education.

**Item A: Call to Order**

Chairman Morse called the meeting to order at 9:39 a.m. He introduced Cora Huling, daughter of Board Member Krista Huling. Chairman Morse congratulated Krista and her family.

**Item B: Oath of Office**

Student member, Rainbow Chen, was sworn in as the Student Voting Member of the State Board of Education.

### **Item C: Public to be Heard**

Sandy Baird, citizen of Burlington, VT, and former teacher of Burlington College addressed the board. She stated her concern for the lack of available information for students and faculty. She asked the board for the location of the records.

Chairman Morse said the State Board of Education is aware of the situation and aware of the responsibility of the SBE and AOE. Chairman Morse invited Baird to stay until they reached agenda item L which is when there would be an update on Burlington College from the Agency of Education.

Nancy Cornell, citizen of Starksboro, VT, and Editor of Vermont Learning addressed the board. She said she is a member of the Addison Northeast Act 46 Study committee. She spoke of her struggles in understanding Act 46 and has some comments, questions and concerns regarding agenda Item J that relate to proposals for alternative structures.

Chairman Morse asked Cornell to stay until agenda Item J was be presented and discussed.

### **Item D: Consent Agenda**

**Motion:** Vice Chair Oller moved to approve the consent agenda without Item 2. The motion was seconded by Perrin.

**Vote:** The vote passed unanimously.

Oller made a motion to accept the Item 2. Perrin seconded. Chairman Morse asked for a discussion. Oller was concerned that the financial qualification section had not been fully researched. She continued that this is an initial approval but stated that it looked like the school had been in operation since 2012 and she wondered how they were paid from 2012 - 2016. Oller would like to be consistent when accepting initial approvals.

Secretary Holcombe suggested asking AOE employee, Cassandra Ryan, to speak to the review process specifically.

Martha Tucker, Stone Path Academy, Educational Director, introduced herself to the board and offered to share any additional information. Oller repeated her question regarding the financial viability of the school and stated that the question is really for the person that reviewed the application.

Chairman Morse tabled the discussion and moved on with the agenda. The SBE will come back to this motion when there is more information.

### **Item E: Board Members Announcements and Student Representatives Emails**

Mathis mentioned that he attended the VPA Meeting. Mathis added he also attended a NASBE seminar regarding ESSA and the reauthorization that will be discussed a bit later in the meeting.

Chen said she will be attending the upcoming Next Generation High School Educator's Summit in Washington, D.C. as a representative on a student panel that will include a group of students from around the country. Chen noted that she was in Arkansas last month. She gave an inspirational speech and now Arkansas is considering adding student representation to their State Board of Education.

Johnson-Aten mentioned that one of her teachers, Laura Botte, received the Presidential Award for Excellence in Math and Science. She will be going to Washington, D.C. in September.

#### **Item F: Chair's Report**

Chairman Morse said there would not be a Chair's report due to the length of the agenda.

#### **Item G: Secretary's Report**

Secretary Holcombe announced that RETN won the SBE videographer bid. She welcomed them to the meeting and looks forward to working with them.

#### **Item: H – Committee Reports**

Mathis reported back regarding last month's op-ed and field memo. They were both generally well-received across the nation and locally. Mathis noted that there is misconception that the State Board will reject the federal dollars. He reiterated that this is not the intention of the Vermont State Board of Education.

Mathis shared a draft letter to be issued from the Chairman to go to the field indicating that the VT SBE intends to apply for and submit a plan for ESSA reauthorization to get the 50+ million dollars. Chairman Morse asked that board members to review the draft letter so it could be addressed later in the meeting.

#### **Item I: CTE Decision**

Secretary Holcombe advised that this issue came before the board at the May 2016 meeting. The Agency of Education invited comments from Burlington Technical Center (BTC), Center for Technology, Essex (CTE) and Northwest Technical Center (NWTC). Superintendent Kirsch made the initial request. The board asked the AOE to provide data to this specific request aligned against the rules as written.

Deputy Secretary Bouchey advised that her team analyzed the request as it was specifically written. The AOE went through the four questions as specified in Rule 2374 and answered them in the report that was submitted. Bouchey pointed out that there are a variety of different ways to count students such as through program enrollments, head counts and full-time equivalency which is directly related to fiscal questions. Full-time equivalencies are measured in 6 semester running averages. In addition, she pointed out that there are no easy answers. There are complex governing structures and complex data to be considered. Bouchey added that the CTE is a full-time program while BTC and NWTC are part-time programs.

Four questions were addressed:

1. Will the changes significantly affect technical center program enrollments?
2. The change will not significantly increase the distance between technical center and the high school?
3. Will the change provide more opportunities to students?
4. The fiscal impact of the change will not be so great that the technical centers affected by the change cannot accommodate it and that other schools in a service region will have to assume a significantly larger portion of the costs of operating the technical center?

Bouchev said regarding question number 1 that the evidence indicated the proposed change would have a significant impact in enrollment, including a negative impact for CTE and BTC, and a substantial increase for NWTC.

Bouchev said regarding question number 2 that the evidence indicated the proposed change would decrease the distance travelled between technical center and the high school for Fairfax students in particular and for most students in FWSU generally.

Bouchev said regarding question number 3 that the evidence did not definitely indicate that the change will provide more opportunities to students.

Bouchev said regarding question number 4 that the evidence indicated the proposed change would have a substantial negative impact on BTC and CTE. It would substantially increase available revenue and students for NWTC.

Bouchev said that in conclusion and based on the evidence and data provided, the AOE concludes the proposed reassignment would adversely affect the student counts and revenues at BTC and CTE, while increasing revenues and student counts at NWTC. Practically speaking, the impact of the proposal has substantive meaning primarily for students from Fairfax, the only operating district. Bouchev continued that however, enrollment patterns for students who tuition to BFA-Fairfax, from towns other than Fletcher and Georgia, are also relevant. She added that the evidence suggested opportunities are currently stronger at BTC and CTE, and there was no clear evidence or plan yet of how opportunities might change at NWTC if the request is approved.

Bouchev stated for these reasons, the AOE recommends that the SBE not change the career technical education regions at this time.

Chairman Morse asked for comment.

Ned Kirsch, Superintendent of Franklin West Supervisory Union, spoke in favor of the change.

Rachelle LeVau, school board member of BFA – Fairfax, spoke in favor of the change.

Bob Travers, Principal of the Center for Technology, Essex, spoke against the change.

Tracy Racicot, Burlington Technical Center, spoke against the change.

Leeann Wright, Northwest Technical Center, spoke in favor of the change.

Judith DeNova, Superintendent of Chittenden Central Supervisory Union, spoke against the change.

Cathy LaVoie, FGI Workforce Investment, spoke in favor of the change.

Bailey Halliday, student member of BFA – Fairfax School Board, spoke in favor of the change.

Chairman Morse asked for a motion. Mathis moved to deny the request for change in CTE Region. Chen seconded. Chairman Morse asked for discussion by the board. Mathis indicated that the statute had not been satisfied. Perrin added the decision is challenging as it doesn't affect 29 students but affects all students.

Chairman Morse asked for a roll call vote.

**Roll Call Vote:** Yea - Mathis, Peltz, Perrin, Huling, Chen; Nay – Oller; Abstain – Johnson-Aten; Absent – Weinberger.

**Vote:** The motion passed.

### **Item J: Draft Proposed Rules on Alternative Education Structures**

Russo-Savage said that although Act 46 provided some guidance about proposals for alternative structures, there wasn't the same level of specificity as for districts proposing mergers. Russo-Savage said that the State Board's July 29 guidance is organized conceptually. She continued that the draft proposed rules are an attempt to organize the issue chronologically so districts pursuing a proposal for an alternative structure will know what the process is and what the SBE will be looking at when considering them in the context of the statewide plan.

Russo-Savage said that the draft proposed rules are based primarily on Act 46 statutory language and on the Agency's best interpretation of what the SBE requested after its June 2016 retreat. Russo-Savage added that the draft rules are grounded in what is in Act 46 and elsewhere in law, and in the SBE's analysis of how to implement the law as currently written. Proposals for alternative structures will be presented to the SBE after school boards or study committees have researched all other options and concluded that an alternative structure is the best or only option.

Russo-Savage added that it is only fair for the rules to expect analysis to be based on data if it is data to which school boards or study committees already have access or which the Agency can make available to them.

Russo-Savage said the economic impact would be nonexistent or minimal based on the incentive grants available as outlined in Act 153 and Rule 706b.

Chairman Morse asked for discussion. Mathis said that much of this is interpretation and wishes that the length was half of what it is. He continued that if the study committees have done the preliminary work to rule out the preferred structure that the data should already have been obtained and used. Russo-Savage said the goal was to have the rules be a natural extension of the research that has already been done by study committees and school boards. Peltz asked how long the rulemaking process might take and if the November 30, 2017 date was not feasible. Russo-Savage said November 30, 2017 is the deadline established by the legislature and that the rulemaking cannot change the law.

Chairman Morse asked for comment.

Rama Schneider, Williamstown and Northfield Study Committee Chair, commented on the subject.

Nancy Cornwall, citizen of Starksboro, VT, commented on the subject.

Chairman Morse asked if there was a motion on initiating the rule-making process by sending the proposed rules to ICAR for its initial review. Peltz made the motion. Huling seconded.

**Vote:** Motion passed unanimously.

#### **Item K: Draft Guidance on Mergers**

Chairman Morse asked for a motion. Peltz made a motion to approve the draft guidance. Oller seconded the motion.

**Vote:** Motion passed unanimously.

#### **Consent Agenda Item 2**

Oller asked Cassandra Ryan, AOE, for more information about the financial guidelines that were looked at for Stone Path Academy. Ryan said the school was reviewed by an independent contractor, Peter Gilmore. She continued that this is a new entity which has been providing services but not as a school. Ryan added there will be another review in 2 years. Oller said the process of review does not appear to be consistent from one initial to another.

Motion to approve was made by Oller earlier in the meeting. Peltz abstained. Oller abstained.

**Vote:** The motion passed.

Chairman Morse called for a lunch recess at 12:30 p.m. and noted the meeting would reconvene at 1:00 p.m. He said that the first order of business will be the draft letter as proposed by Mathis earlier in the meeting.

Chairman Morse reconvened the regular Board meeting at 1:05 p.m.

Mathis explained the letter. Mathis asked for a motion to approve the letter so that that he and Chairman Morse can refine it. Motion was made by Johnson-Aten. Peltz seconded the motion.

**Vote:** The motion passed to accept the draft letter as written.

**Item L: Burlington College Update – Bill Talbott**

Talbott said at the July 2016 meeting the State Board of Education made the AOE temporary custodians of the Burlington College records since attempts to assign them to other institutions were denied because of the condition of the records. Talbott continued that the Burlington College records are now at the Barre office in a secure location. He added that AOE staff is in the process of organizing them with the goal of assigning them when the task is completed.

Talbott said Burlington College used a vendor for some student records and school financials named Campus Café from Massachusetts. He continued that Campus Café stopped billing Burlington College in May 2016 and were not been paid since February 2016. Talbott said the Peoples United Bank owns the mortgage to Burlington College. He added that Campus Café is not billing any longer but in order to obtain the records that it holds, it will cost the AOE money to obtain the license agreement.

Talbott said the State Board of Education has the power to expend state funds. He added that there would be a statutory lien placed on the assets. The anticipated cost is \$18,062.20. Clare O’Shaughnessy, AOE Legal Counsel, said that perhaps there should be a revision to the law showing that schools need to have a contingency in place in the event of closure. She added that the Attorney General suggested that we not file the lien till the final costs are known.

Chairman Morse said it looks like the SBE could be approving a cost that may exceed \$18,000. O’Shaughnessy said yes. Chairman Morse said that he and Talbott will be looking at the SBE budget in September 2016 and perhaps make some revisions.

Chairman asked for a motion to expend state funds necessary to ensure the proper storage and availability of the Burlington College records. Peltz made the motion. Oller seconded the motion.

Chairman Morse asked for comments.

Sandra Baird, citizen of Burlington, VT, commented on this subject.

Morse said that the board is taking this topic very seriously.

**Vote:** Passed unanimously.

**Item M: Federal Update – Amy Fowler**

Deputy Secretary Fowler said that she recently attended a CCSSO Federal Liaison meeting. Fowler mentioned the key education priority issues.

1. ESSA Implementation
2. Fiscal Year 2018 Priorities
3. Carl D. Perkins Vocational and Technical Education Act (Perkins/CTE)
4. Higher Education Act
5. School Meals
6. Student Data Privacy (FERPA)
7. Early Education

**Item N: Aligning Agency Structure and Website around EOS – Heather Bouchey, Pat Fitzsimmons, Tracy Watters, Lori Dolezal, Stephanie Brackin**

Bouchey led the presentation that addressed the below topics.

1. Workgroups
  - Personalization and Flexible Pathways
  - Proficiency-Based Learning
  - Multi-Tiered Systems of Support
  - Education Quality
2. Website Redesign and Migration

**Item O: SBE Rule 2200 Series Update – Clare O’Shaughnessy**

Chairman Morse stated that at the July 29<sup>th</sup> meeting the board initiated the new rules for SBE Rule 2200 series. He continued that the documentation did not get submitted to ICAR in August. The next ICAR meeting is September 12<sup>th</sup>. Chairman Morse asked for a motion to move the rules forward. Mathis moved to modify the action of July 29<sup>th</sup> to authorize the State Board of Education to present the SBE Rule 2200 series and the SBE Rule 7300 series to ICAR. The motion was seconded by Huling.

**Vote:** The motion passed unanimously.

Oller made a motion to vote to authorize the State Board of Education Chair to hire counsel and any necessary staff for the rulemaking process. The motion was seconded by Perrin.

**Vote:** The motion passed unanimously.

Chairman Morse confirmed that the next meeting is September 20<sup>th</sup> at St. Johnsbury Academy. The meeting start time is 9:30 a.m.

Chairman Morse asked if there was any further discussion. There was none.

**Motion:** Johnson-Aten moved to adjourn the Board’s August meeting. Oller seconded this motion.

**Vote:** The motion to adjourn passed unanimously.

The meeting adjourned at 2:15 p.m.

Minutes recorded and prepared by Suzanne Sprague

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## **Attachment E**

### **Economic and School Impact Statement Submitted to ICAR**

# Administrative Procedures – Economic Impact Statement

## Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

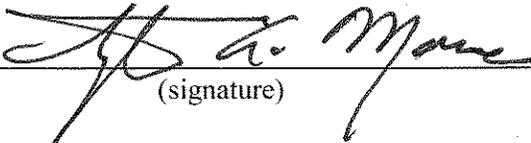
Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

**Rule Title: State Board of Education (SBE) Rule 2200  
Evaluation of Private Education Programs (Independent  
School Program Approval), Rule 2200 et seq through Rule  
2230.4**

 , on 9/1/2010 .  
(signature) (date)

Printed Name and Title:

Stephan Morse, Chair, Vermont State Board of Education

*BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.*

1. TITLE OF RULE FILING:

State Board of Education (SBE) Rule 2200 Evaluation of Private Education Programs (Independent School Program Approval), Rule 2200 et seq through Rule 2230.4

2. ADOPTING AGENCY:

State Board of Education

3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Both approved and/or recognized independent schools operating in Vermont and independent schools seeking approval or recognition in Vermont are potentially affected by the adoption of the rule by the increased cost of obtaining accreditation from entities which are approved to accredit such educational programs; this increased cost will vary depending on the accrediting entity; similarly tutorial programs, corrections education program are potentially affected by the adoption of the rule depending on the cost of obtaining accreditation; parents, students and school districts (tuitioning) sending students to independent schools are anticipated to benefit from measures designed to assure equity and equal opportunity for admissions, program availability;

4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:*

The proposed amendment to the rule is expected to impact local school districts and taxpayers by providing increased fiscal accountability for publicly tuitioned students, increasing consistency of independent school financial data and budget reporting

**5. COMPARISON:**

*COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

Since state law requires the SBE to approve or recognize the operation of independent schools in Vermont, alternatives to the rule were not considered.

**6. FLEXIBILITY STATEMENT:**

*COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:*

None

**7. GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:****a. TRANSPORTATION —**

*IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., “THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS” OR “LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE.”):*

None

**b. LAND USE AND DEVELOPMENT —**

*IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., “THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT.” OR “THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND.”):*

None

**c. BUILDING INFRASTRUCTURE —**

*IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):*

None

**d. WASTE GENERATION / REDUCTION —**

*IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY*

*PROJECT'"):*

None

e. OTHER —

*IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:*

None

## **Attachment F**

**Study Published the Journal of Housing Research**

# **School Vouchers and Home Prices: Premiums in School Districts Lacking Public Schools**

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# **School Vouchers and Home Prices: Premiums in School Districts Lacking Public Schools**

## **Abstract:**

Vermont has numerous school districts lacking traditional public schools. In these jurisdictions, families are provided school vouchers. Using a sample of 2,933 single-family home purchase transactions, we examine residential property values in areas with vouchers as compared to those with assigned schools. We find robust evidence that these vouchers increase home values. We also find that home values are increasing in the number of alternative schooling options available within reasonable commuting distances. Finally, homes with access to schools that are better than the closest school, as defined by standardized test scores, sell at a higher price where vouchers exist. Thus, we conclude Vermont's housing market places a premium on school voucher access availability, and this premium increases if families have access to more and better schools.

## **School Vouchers and Home Prices: Premiums in School Districts Lacking Public Schools**

### **I. Introduction**

On April 11, 2013, the North Bennington, Vermont school board voted unanimously to close the local public grade school (North Bennington Graded School) and lease the facility to a newly formed private school, beginning with the 2013-2014 academic year. In doing so, North Bennington became a “tuition town,” granting families tuition vouchers to send their children to almost any non-religiously affiliated school of their choice. North Bennington is not the first Vermont community to convert its public school to a private one. Winhall Elementary School was reconstituted as the private Mountain School at Winhall in 1998. Though these school conversions are uncommon, the final result is not. Many communities across the State of Vermont have no traditional public schools, but they offer tuition voucher programs as “non-operating” school districts.

While other states have recently launched charter-school and/or school voucher programs to complement traditional public school education, Vermont’s voucher program is over 140 years old. Vermont’s program also has one unique element: no district can have both a traditional public school and the voucher program. Each community has one, or the other. School districts can’t have both. This unusual mix of “school districts” with “school-less districts” makes Vermont a compelling laboratory for analyzing the value of educational choice opportunities on residential real estate prices. Because Vermont’s system prohibits voucher communities from also offering what could be a valuable traditional public school option, the real estate valuation effect of vouchers in this study should be viewed as a worst-case scenario.

A community that offered both vouchers and traditional options would, presumably, be a more attractive alternative.

Unlike in other parts of the country where some underperforming traditional public schools have been converted to privately operated charter schools, the North Bennington public school was not privatized due to poor academic performance.<sup>1</sup> The reconstituted independent school will retain the same teachers, administrators, and staff, while servicing the same basic student population base as their public school predecessor. While town officials hope to eventually take advantage of economies of scale by increasing the student population through attracting more students, the primary motivation for the conversion seems to be a desire for local autonomy, control, and parental choice with respect to educational decisions.<sup>2</sup>

Primary and secondary education in America has long been a point of both local and national concern. With current expenditures of nearly \$11,000 per student accounting for well over 4% of gross domestic product (GDP), the United States ranks near the top of the developed world with respect to its financial investment in providing educational opportunities for its citizenry.<sup>3</sup> Despite this substantive resource commitment at the aggregate level, tremendous variation exists both across and within States in terms of both aggregate and per pupil spending. These differences are (at least partially) driven by the nature of the educational finance system, which continues to vest both decision-making and financial responsibility primarily with state

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<sup>1</sup> Greatschools.com ranked the school's quality as a 7 on a 10 point scale, while the school's students performed above the state average on the New England Common Assessment Program (NECAP) in most grades and subjects.

<sup>2</sup> While Winhall's privatization has led to significant growth in their student population -- more specifically a doubling of the number of students served from less than 40 in 1998 to 80 by 2013 -- these privatizations are not without their critics. Legislative efforts to prohibit such conversions were narrowly defeated in the Vermont Senate (vote: 12-14) on May 9, 2013, with Republicans unanimous in their opposition to such restrictions and Democrats split primarily along geographic lines.

<sup>3</sup> See U.S. Department of Education, National Center for Education Statistics, "The Conditions of Education," available at: [http://nces.ed.gov/programs/coe/pdf/coe\\_ifn.pdf](http://nces.ed.gov/programs/coe/pdf/coe_ifn.pdf), accessed 3/25/2013. More specifically, only 3 (Luxembourg, Switzerland, and Norway) of the 34 OECD member nations spend more per pupil than the current U.S. average of \$10,995 per year.

and local authorities. Recent estimates from the U.S. Department of Education suggest nearly 83% of K-12 spending is funded through state (45.6%) and local (37.1%) resources, with private contributions (8.9%) outpacing federal government investment (8.3%).<sup>4</sup> Within states, considerable variation also often exists across school districts with respect to local funding. Even within a given school district, private contributions can lead to disparities across schools with respect to the discretionary resources available to teachers and administrators.

High public educational spending by communities seems to be warranted. School quality is consistently found to be a significant determinant of local housing prices. While individual real estate agents are often restrained in their willingness and ability to comment on their personal perceptions of local schools outside of directly verifiable test scores, a cottage industry has arisen designed to give potential homebuyers access to additional information about individual schools across a plethora of dimensions of school quality.<sup>5</sup> The existence of such firms, and the demand for their services, provides *prima facie* evidence that school characteristics represent a critically important dimension of the housing search process for many buyers. Furthermore, to the extent market participants value various dimensions of school quality, access to such information should enhance the operational efficiency of local housing markets, and value-relevant components of local schooling options should be observable in housing market transactions.

Applying this general framework, the purpose of the current investigation is to assess whether the residential housing market values school choice, and if so, to what extent. More specifically, we use a sample of 2,933 single-family residential transactions to investigate the

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<sup>4</sup> See U.S. Department of Education, “10 Facts About K-12 Education Funding,” available at: <http://www2.ed.gov/about/overview/fed/10facts/index.html>, accessed 3/25/2013.

<sup>5</sup> See, for example, GreatSchools.org, neighborhoodscout.com, psk12.com, publicschoolreview.com, and schooldigger.com to name just a few.

valuation implications of Vermont's tuition voucher program. Previewing our main empirical results, we find the residential real estate market does indeed value the options provided by these vouchers. Homes located in jurisdictions providing vouchers exhibit market values over \$8,450 (or nearly 5.9%) higher than observationally equivalent housing units in jurisdictions without such educational options. Furthermore, the benefit of living in a school choice district increases as both the number, and quality, of viable alternative schooling outlets increases.

The remainder of this paper is organized as follows. Section two reviews the limited existing empirical evidence on the valuation implications of school choice programs. Specific attention is given to the valuation implications of school quality. Section three outlines and describes the unique school choice voucher system currently available to many Vermont residents. The data used to analyze our focal hypotheses are described in section four, while the results of our multi-variate empirical analysis are presented in section five. Finally, section six summarizes our key findings, discusses their implications, and concludes.

## **II. Empirical Evidence on the Value of School Quality and School Choice**

Given the enormous time and financial commitment afforded K-12 education across the country, it comes as little surprise that empirical studies consistently find school quality to be positively related to increased housing values. For example, as far back as Edel and Sclar (1974) we find empirical evidence of school quality, in their case school expenditures (\$) per pupil, being directly capitalized into housing values. Bogart and Cromwell (1997) find a premium of approximately 20% accruing to "better" schools in Cleveland, while more recently Owusu-Edusei, Espey, & Lin (2007) find similar price premiums of 9 to 19% accruing to properties located in areas zoned to include exclusively "above-average" schools in their sample of South

Carolina homes. Brasington and Haurin (2006) find premiums of 7.1% for superior schools in Ohio, while Figlio and Lucas (2000 and 2004) report premiums of over \$10,000 (or approximately 8%) for homes in “A” level school districts relative to those in “B” level districts across Florida. Continuing, Black (1999) finds parents are willing to pay a house price premium of approximately 2.5% for access to schools with 5% higher test scores across suburban Boston, while Ries and Somerville (2010) find price premiums of approximate \$14,000 (or 4%) for homes located in the best performing school districts around Vancouver. Numerous additional studies also find a direct association between various dimensions of school quality and residential housing prices. These studies include, but are not limited to, Haurin and Brasington (1996), Brasington (1999), Downes and Zabel (2002), and Clapp, Nanda, and Ross (2008).

This extant research clearly suggests school quality is an important determinant of local housing prices, however, relatively little empirical work has been conducted into the related impact of school choice, and particularly tuition vouchers, on residential home values.<sup>6</sup> While basic finance theory posits options have value, and hence one might expect both school choice and voucher programs to unequivocally increase property values in participating locations, operationalizing this construct to residential property markets engenders significant complexities. For example, the presence of unconstrained school choice across a geographic catchment area reduces the value of proximity to “good” schools. Reback (2005) provides evidence of precisely this phenomenon in his analysis of Minnesota’s adoption of a statewide open enrollment system. Over the eight years immediately subsequent to the policy’s adoption, properties in areas with a greater fraction of students transferring out of district experienced greater appreciation than homes already located in regions with preferred schools. A similar outcome was observed in

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<sup>6</sup> See Nechyba (1996 & 2000), Epple and Romano (1998), and Ferreyra (2007) for theoretical insight on the impact of school vouchers on residential housing values.

Oslo, Norway. In the late 1990s, Oslo abandoned catchment-based school assignments and instituted a choice-based enrollment policy. Prior to the change, catchment-area homes assigned to the worst-performing schools were valued 7 to 10 percent below the average Oslo home. The policy change helped equalize home values, as half of the discount disappeared (Machin and Salvanes 2010).

Fack and Grenet (2010) consider the residential value impact of vouchers offered in tandem with traditional catchment-based assignments in Paris, France. They examine the presence, or absence, of voucher-funded private middle and high schools in Paris and conclude that the presence of such voucher-funded institutions eliminates the relationship between designated school assignment zones and housing values.

Danielsen, Harrison, and Zhao (2013) observe that the presence of a charter school appears to make a community more attractive to families. Families who send children to the charter school are significantly more likely to relocate nearer to the school, and the school's attraction is much greater than parent work locations. While Danielsen et al. does not attach a price to the improvement in community quality, the charter school amenity should be priced, to some extent, in surrounding residential real estate. In sum, depending upon the nature of available educational choice arrangements, a variety of residential sorting equilibria and resulting price patterns appear possible. However, a common thread appears to be that school choice raises the attractiveness and residential home values of communities that had been previously served by poorly performing schools.

### **III. Vermont's School Choice Voucher System**

School voucher programs across the United States are typically a relatively new and politically divisive phenomena. Vermont, on the other hand, has operated a relatively broad, generally non-controversial, tuition vouchering program for over 140 years.<sup>7</sup> Beginning in 1869, Vermont residents living in towns which do not operate public elementary or high schools, and furthermore do not belong to a supervisory union, were granted the right to attend any public school across Vermont, on a space available basis, with the state and local municipality picking up the cost by providing a tuition voucher equal to the full cost of attendance. These jurisdictions are frequently referred to as “tuitioning towns.” Parents in tuitioning towns also have the option to send their children to an array of independent schools, or out-of-state public schools, on a subsidized basis.<sup>8</sup> In general, this subsidy is set equal to the lower of the full cost of tuition at the alternative school, or the state-wide average per pupil expenditure. Thus, residents of “choice communities” can essentially send their children to any public school across the state for a marginal tuition cost of \$0, or send their children to private academies or independent schools on a heavily subsidized basis.<sup>9</sup>

This portability to independent schools, and similarly to public schools across state lines, represents a unique aspect of Vermont’s voucher program, as many choice programs in operation throughout the remainder of the country rely exclusively upon networks of public schools. Additionally, the inception and growth of Vermont’s voucher program are somewhat unique

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<sup>7</sup> See Sternberg (2001) for a comprehensive review of the foundations and development of Vermont’s school voucher program.

<sup>8</sup> The option to attend out-of-state schools was extended to program participants in 1902. According to the Vermont Independent Schools Association (VISA), 116 tuition vouchering program participants currently attend school outside of the state. Some of these students attend school in Canada. See <http://www.vtindependentschools.org/>.

<sup>9</sup> While reimbursement of transportation expenses is not statutorily mandated, many choice towns offer bus service to schools in nearby communities, contract with third-parties to provide transportation services, and/or reimburse a fraction of parental expenses associated with getting their children to and from these non-local schooling alternatives.

relative to more recent choice-based voucher initiatives. While many recent initiatives along this dimension have been created in direct response to failing inner city schools, the roots of Vermont's program date back to the state's founding principles and commitment to education.<sup>10</sup>

As early as 1777, Vermont's first constitution mandated the establishment of local schools to ensure a well-educated populace. Consistent with this mission, for nearly the next 100 years state officials oversaw the creation of dozens of publicly chartered grammar schools and private academies. Over time, given the rural nature of many Vermont communities, it was deemed impractical to require each town to build its own school. Additionally, due to the widespread academic success of many private academies across the state, there was little concern over the quality and rigor of the academic offerings provided by non-public entities. Thus, in 1869, the Vermont legislature adopted the state's first school choice tuitioning (i.e., voucher) program. While many modest changes have been made to the program over the past 140 years, this basic program structure continues to serve as the framework for the educational choice opportunities available to Vermont families today. More than 2,500 students across the state of Vermont participated in this tuition vouchering program during 2012.<sup>11</sup> For comparison The Vermont Agency for Education reports total state-wide public school enrollment of 86,133 for the year.

#### **IV. Data and Univariate Analysis of Voucher and Non-voucher Towns**

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<sup>10</sup> This commitment continues today, and is perhaps best exemplified by per pupil spending. In 2011-2012, average per pupil spending on primary and secondary education across the state averaged over \$16,000. This figure is more than 40% higher than the national average. See, <http://www.edchoice.org/Documents/Publication/2013/ABCs/2013-ABCs-of-School-Choice--Vermont--Town-Tuitioning-Program.pdf>, accessed 4/1/2013.

<sup>11</sup> See, <http://www.edchoice.org/Documents/Publication/2013/ABCs/2013-ABCs-of-School-Choice--Vermont--Town-Tuitioning-Program.pdf>, accessed 4/1/2013.

We begin the empirical portion of our analysis by assembling a dataset of single-family residential sales transactions from across the state of Vermont. As alluded to in our previous discussion, using Vermont as an empirical laboratory offers a number of compelling advantages. For example, a number of previous investigations into school quality and housing values note the interdependent nature and important role of community characteristics. Relative to other geographic locations, Vermont offers a relatively homogeneous demographic and socio-economic landscape. Racially, the state is predominantly Caucasian, with only two public high schools in our sample having a student population that is less than 80% white.<sup>12</sup> While low-income areas exist, the state exhibits relatively little abject poverty. Within this context, school choice decisions are significantly more likely to be driven by quality and proximity issues than by Tiebout-esque geographic income or racial sorting.<sup>13</sup> Thus, our empirical results offer a cleaner test of the value relevance of school vouchers than has been available to previous analysts.

On the downside, most of the state is sparsely populated, limiting the number of home sale transactions observable within any given town or chronological window.<sup>14</sup> As such, to add power to our statistical analyses, we examine a relatively long time period. Our analysis includes all arms-length, single-family residential home sales that took place within the state of Vermont over a three-year period, between April 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2012. Information on each of these home sale transactions, and the associated characteristics of the subject properties, are gleaned from Zillow.com. To ensure the generalizability of our results, we further restrict the

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<sup>12</sup> These schools are Winooski High School (64.1%) and Missisquoi Valley Union High School (78.1%). Three additional public secondary schools have Caucasian enrollment of less than 90%: Burlington High School (80.7%), South Burlington High School (87.6%), and Montpelier High School (89.8%).

<sup>13</sup> See Tiebout (1956) for further discussion and analysis of issues related to neighborhood sorting.

<sup>14</sup> For simplicity, we use the term town to refer to all cities, towns, unincorporated areas, and gores (small, low population areas with limited self government) throughout the state. 2010 U.S. Census estimates place the total state population of Vermont at only 625,741 residents.

sample to structures containing one to five bedrooms, one to six bathrooms, and a primary living area of 500 to 5,000 square feet. Additionally, only transactions with a market value of more than \$25,000 and less than \$2,500,000 are included in our analysis. Using these decision rules, we are left with a final sample of 2,933 home sale transactions.

Descriptive statistics for these sample observations are provided in Exhibit #1, and a tabulation of all the cities, towns, unincorporated areas, and gores from which these observations are drawn is provided in the Appendix. Among the noteworthy findings, the typical house in our sample has approximately three bedrooms, two bathrooms, nearly 2,000 square feet of heated, primary living area, and exhibits an average selling price of approximately \$240,000. Not surprisingly, given the rural nature of Vermont, lot sizes vary widely and range from slightly over 1,000 square feet to literally hundreds of acres. As outlined above, the state is predominantly white, and reasonably well off economically, and 8.6% of property transactions occurred in jurisdictions participating in the State's voucher program at the high school level. Many of these jurisdictions also participate at the elementary school level.

As illustrated in Exhibit #2, these school voucher jurisdictions are broadly distributed across the entire state, rather than being concentrated within a confined geographic area. The typical Vermont residence which turned over during our sample period was also located within a 20 minute (one-way) commute of two to three schools, and a 30 minute (one-way) commute of over five schools.<sup>15</sup> As would be expected, roughly one-half of these drivable alternatives represent high schools with higher standardized test scores than would be found at the default (i.e., geographically most proximate) public high school location.<sup>16</sup> These latter figures suggest

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<sup>15</sup> These potential commuting distances were selected to book-end the typical travel time for Vermont workers. 2010 U.S. Census estimates place the average commuting time for Vermont workers over 16 years of age at 25.4 minutes.

<sup>16</sup> NECAP scores for Vermont public schools are available through the Vermont Agency of Education.

true school choice is available for most Vermont families with access to the State's tuition voucher program.

Exhibit #3 provides further descriptive insight into the nature of our sample by bifurcating the available observations into those with, and without, access to public school choice through the State's voucher system. Properties in choice (voucher) towns sell, on average, for \$75,000 less than those in non-choice locations, even though these are larger homes with larger lot sizes than those found in non-choice locales. A naïve assessment of these facts might confuse correlation with causation; suggesting that voucher programs reduce property values and income levels. However, the fundamental driver of this correlation is relatively obvious. Historically, the tuition voucher program was developed so that relatively rural areas were not burdened by the cost of operating a local public school. To participate in the State's tuition voucher program, a town must not operate its own school or belong to a supervisory union. Almost by definition, these towns are smaller and more rural, on average, than those communities operating their own schools. Additionally, median income levels in voucher towns are also lower than in non-voucher towns. As such, it should come as no surprise that homes located in voucher towns across Vermont exhibit relatively low unconditioned transaction prices. Hence, an effective analysis of school choice/voucher valuation implications requires a more sophisticated multivariate analysis.

## **V. Multivariate Analysis**

Exhibit #4 presents the results from our core multivariate analysis of the valuation effects of school vouchers in Vermont. The table presents results from four OLS regressions of the following general form:

$$\text{Log (Transaction Price)} = f(\text{Housing Amenities, Community Characteristics, Voucher Availability, } \varepsilon)$$

Each model is designed to capture the determinants of housing prices. In Model 1, the natural log of sample home transaction prices are regressed exclusively against each respective unit's observable physical attributes. Following the approach of Gatzlaff and Ling (1994), we employ a relatively parsimonious hedonic specification.<sup>17</sup> As expected, each significant amenity is positively related to transaction prices, with more bedrooms, more bathrooms, and larger homes all increasing transaction values.

Model 2 expands the empirical specification to include demographic and socio-economic characteristics of the community in which each property is located. While our housing amenity results are robust to the inclusion of these community attributes, relative to previous housing value investigations our Percent White coefficient estimate exhibits an unexpected negative sign. We view this result as a by-product of the unusual demographic nature of Vermont. Burlington, the county seat of Chittenden County, is only 88.9% white, while the rural areas of Vermont are more than 95% percent white.<sup>18</sup> Given the relatively high housing prices observed across Chittenden County, the fact that home prices are lower in the relatively all-white rural areas of the state should not be viewed as particularly surprising.

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<sup>17</sup> Gatzlaff and Ling (1994) contend that while repeat sales methodologies provide the most accurate, constant quality measures of housing price appreciation, simple, parsimonious hedonic models also perform relatively well. Similarly, we also note that due to data availability limitations our hedonic specifications do not include controls for time-on-market. As outlined in Benefield, Cain, and Johnson (2014), a wide variety of complex relations have been observed along this dimension. While we know of no reason to suspect that lack of data along this dimension should materially impact our reported results with respect to our focal school choice/voucher attributes, in the interest of full disclosure we do note its omission throughout the current investigation.

<sup>18</sup> Consistent with the descriptive statistics presented in Exhibit #1, 2010 U.S. Census estimates report 95.5% of Vermont residents to be White. No other racial or ethnic classification comprises even 2% of the Vermont populace.

Model 3 introduces our school voucher metric and allows us to directly examine the valuation impact of the voucher amenity. In Model 3, we add a simple binary, 0/1 indicator variable to the empirical specification indicating whether a given property is eligible to participate in the State’s school choice, tuition vouchersing program. Consistent with the expectation that an option is valuable, the positive coefficient on this indicator variable suggests the housing market is willing to pay a significant price premium for units characterized by government subsidized educational choice. These results are both statistically and economically significant, with estimated price premiums of over \$8, 450, or nearly 5.9%, accruing to properties in such locations.<sup>19</sup>

Finally, Model 4 reframes the choice analysis to examine viable school choice alternatives. More specifically, to be considered a viable alternative to the geographically most proximate (i.e., default) schooling option, we assume a maximum allowable one-way commuting distance of 20 minutes. Commuting times between each property and all 63 Vermont public high schools with verifiable New England Common Assessment Program (NECAP) scores are computed using Google Maps. For all properties located in school voucher jurisdictions, we then count the number of viable alternative school options, and include this variable within our existing valuation framework. This revised framework leads us back to our same empirical conclusion that the housing market materially values educational choice opportunities. In Model 4, our viable choice metric is again positive and significantly related to observable transactions

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<sup>19</sup> These marginal effect premiums are calculated by comparing the predicted value of our regression equation across choice and non-choice jurisdictions with all other variables set to their mean values. For example, the expected home value in model three absent school vouchers may be estimated as:

$$e^{(9.721+0.076*3.12+0.241*1.85+-0.029*3.266+0.113*4.870-0.009*90.6+0.010*57.154+0.005*229.637)} = e^{(11.878)} = \$144,082.20.$$

School vouchers raise this value to:

$$e^{(11.878 + 0.057)} = e^{(11.935)} = \$152,534.80, \text{ a premium of over } \$8,450, \text{ or nearly } 5.9\%.$$

prices, with each additional viable school choice/voucher alternative increasing property values by nearly \$4,380 (or slightly over 3.0%).

To further illustrate the magnitude and nature of educational choice across Vermont's voucher towns, Exhibit #5 outlines the number of viable options available to residents of each voucher community. Consistent with the preceding analysis, each home sale transaction is initially assigned to the geographically most proximate public high school as the default schooling option. Using Google Maps, we next calculate the expected one-way commuting time between each transacted property and the remaining 62 public high schools across the State with readily verifiable NECAP standardized test score information. We then count the number of alternative public school options within a viable commuting distance, and further outline the number of those drivable options which exhibit superior performance on the NECAP exam.

Column 1 shows the maximum number of public schools within a 20 minute (one-way) commute for tuitioning or choice town residents. As each property is individually geocoded with unique distances and driving times calculated to each school, the reported numbers represent the maximum number of viable public school options available to any transacted property within the community. Some individual homes within a given community may be located on the far side of town from potential schooling options, and thus may possess fewer effective options.

Column 2 extends the acceptable commute time for viable alternatives to 30 minute (one-way) commuting trips. Examining the degree of choice evidenced across these two columns, in general, we find that for most residents of Vermont towns without public schools, school vouchers do indeed provide a real opportunity to select from a competing menu of educational offerings. More explicitly, three-quarters of these towns have viable alternative schools within a

20 minute commute, while virtually all choice towns (93.8%) have public school options within a 30 minute commute.<sup>20</sup>

Columns 3 and 4 provide a parallel analysis using a more restrictive definition of viable alternatives. As much of the above cited literature documents a preference for school quality as operationalized through higher standardized test scores, columns 3 and 4 restrict our definition of viable alternatives exclusively to those schools which are both proximate (i.e., within the designated allowable commuting time) and exhibit higher average combined reading and math proficiency scores on the NECAP exams than would be available at the geographically closest (i.e., default) high school. Once again, we note that even under this more restrictive definition, a large portion of Vermonters living in voucher towns have ready access to a viable set of educational choice options, with over half (56.3%) of these towns having higher (test score) achieving schools within a 20 minute commute, and three-quarters having such options available within a 30 minute commute. Thus, the majority of Vermont residents living in voucher towns appear to have clear and viable educational choice opportunities.<sup>21</sup>

Exhibit #6 continues our empirical analysis by presenting the results of re-estimating our housing valuation models using these more restrictive definitions of viable choice alternatives. Of the 253 home sale observations originally coded as possessing school choice, 175 (69.2%) have an alternative public school option available within a 20 minute drive. Furthermore, only 139 (54.9%) property transactions have both school choice and higher scoring public schools

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<sup>20</sup> This table understates the true amount of choice available to residents of these towns, as only public school options within a given catchment area (commuting time) are considered. As outlined above, the state of Vermont also allows tuition vouchers to be used at a network of roughly 100 private and independent schools. As test scores generally are not available for these non-public options, they have been excluded from our analysis.

<sup>21</sup> We should note that higher test scores may not make a school a better choice for any particular family. Anecdotal evidence suggests that some families choose a school on the basis of proximity to a parent's work location; simplifying transportation logistics and maximizing parent-child interactions. Describing the attributes of a family's preferred choice relative to standardized school quality benchmarks is an important question, but it is beyond the scope of this analysis.

within this 20-minute commuting area. If the viable commuting distance is extended to a 30-minute one-way commute, the number of transactions with truly viable school choice options increases to 246 (or 97.2%), with 178 (or 70.4%) of those have better-scoring public schools than the nearest public school within the 30-minute commute. The sample components for each of the four regressions in Exhibit #6 are summarized as follows:

- Model 1: Two or more voucher-eligible public high schools within 20 minutes.
- Model 2: Two or more voucher-eligible public high schools within 30 minutes.
- Model 3: One or more ranked school that is “better than closest” and within 20 minutes.
- Model 4: One or more ranked school that is “better than closest” and within 30 minutes.

Turning to the results, across all four samples, voucher opportunities are positively related to housing values. Comparing the results in Models 1 and 3, we find the presence of school choice alternatives within a 20 minute commute increases property values by approximately \$10,879 (or 6.9%), while the more restrictive presence of higher achieving schools within this same drive time catchment area is associated with a substantively higher \$24,181 (16.1%) increase in housing prices. Similar results are found with respect to our 30 minute commuting distances in Models 2 and 4. Alternative schooling options within 30 minutes enhance property values by \$7,618 (or 6.3%), while the presence of higher achieving schools within this same region increase values by \$12,805 (or 8.5%). Taken together, these results strongly suggest the market is willing to pay a substantial premium for access to school voucher programs, particularly when those options include access to schools with higher standardized achievement levels.

## **VI. Summary and Conclusions**

Housing market participants across the United States continue to place great value on access to quality educational opportunities. Taking advantage of unique aspects of Vermont's public school voucher program, the current investigation outlines the impact of tuition vouchers on home prices. Using a sample of 2,933 single-family home purchase transactions occurring across the State between April 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2012, we find robust evidence of statistically and economically important price premiums accruing to properties located in jurisdictions offering school vouchers. These premiums range from 3-16% depending upon model specification, and are robust to alternative definitions of viable commuting distances and minimum school performance (standardized test score) thresholds.

We conclude that educational choice opportunities (in this case school vouchers) increase residential housing values. We also conclude that the voucher programs are more valuable (as measured by property values) when there are a larger number of alternative school choices available. This statement could be rearticulated accordingly: the absence of vouchers (and of viable alternative schools where those vouchers can be used) depresses property values.

We find that Vermont's voucher program is particularly value-enhancing in locations where nearby schools are relatively weak. The availability of vouchers, where the nearest school has low standardized test scores, relative to nearby alternatives, increases typical home values by over \$24,000. Alternatively, the practice of assigning students to relatively weak schools, when no alternatives are offered via voucher, depresses real estate in those assigned jurisdictions by more than \$24,000.

We would emphasize that this study does not suggest that traditional schools should be closed and replaced by school vouchers. Vermont law prohibits both systems from operating in the same jurisdiction simultaneously. While this law makes Vermont attractive for an academic

study of the effect of school vouchers on property values, we do not suggest that this is an optimal real estate development policy. There seems to be no reason that vouchers cannot coexist with a traditional assigned-school as the default option. For example, in France 79% of secondary student enrollment is in assigned public schools, but most other students are enrolled in voucher-funded private schools that can be accessed without regard to home residence location (Fack and Grenet, 2010). This is also the prevailing model in every other U.S. state where vouchers are used, except for Maine which has a small system similar to Vermont's.

Of course, Vermont differs from most other states in that the Vermont voucher program is available to middle-income, and even wealthy, residents. In this regard, we should be careful not to assume that this paper's results are generalizable to other states with means-tested voucher programs. Excluding the middle class means that vouchers are unlikely to have real estate valuation impacts that are as large as those observed in Vermont. Vouchers that are targeted to the poor may improve their education outcomes, but they are unlikely to drive community revitalization since those who escape poverty will lose access to the voucher and must then leave for a better school district.

Additional study is needed to better understand how parents actually choose schools when vouchers make several options available. Our tests presume that families prefer public schools with higher standardized test scores. However, it is also probable that families value schools that are near parents' workplaces. Many families may also value schools with specialized programs in math, science, foreign languages, or the arts. Without regard to how voucher-funded school choice decisions are actually being made by parents, the clear implication of this study is that families perceive school vouchers as enhancing their quality of life, and they are willing to pay more for homes in jurisdictions that provide school vouchers.

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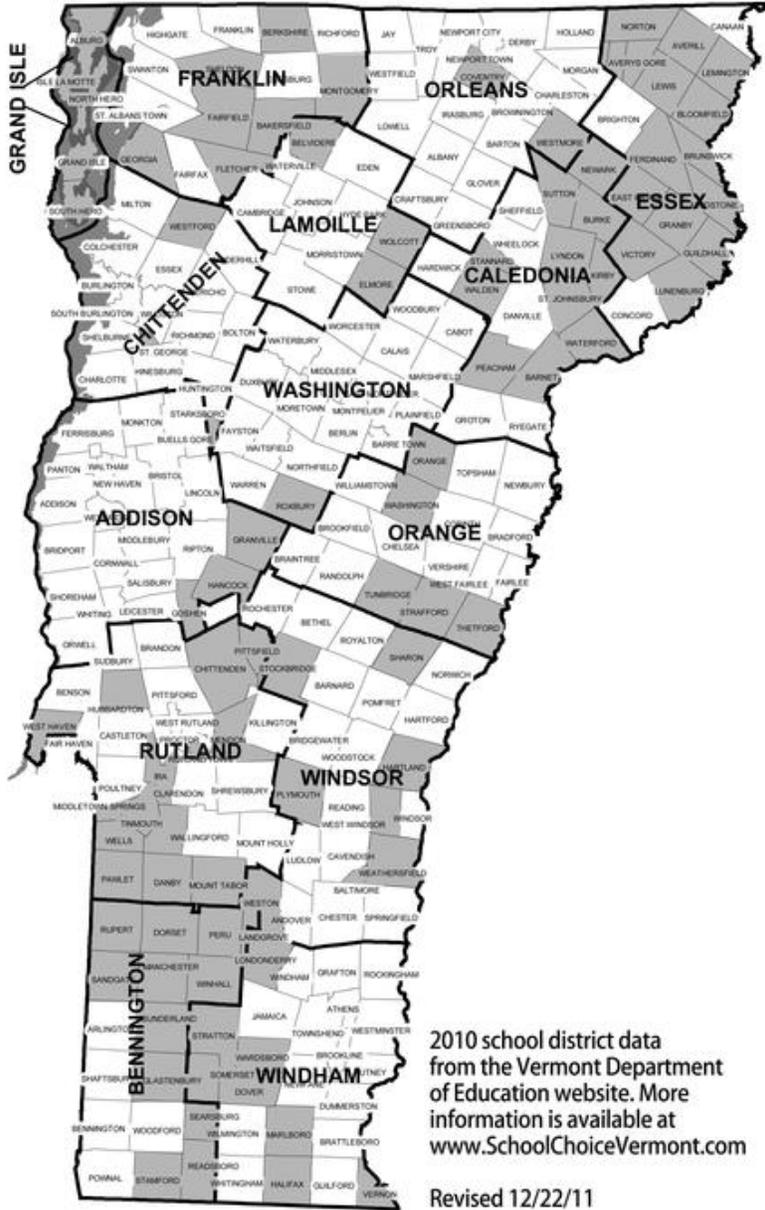
**Exhibit #1**  
**Descriptive Statistics**

This table outlines descriptive statistics for all sample property transactions. More specifically, the 2,933 transactions all took place within the State of Vermont between April 1<sup>st</sup>, 2009 and March 31, 2012. Sample observations were limited to units containing less than 6 bedrooms, less than 7 bathrooms, and exhibiting a transaction price of more than \$25,000 and less than \$2,500,000. Community characteristics represent school level racial/ethnic diversity and county level income and value metrics. Commuting times are calculated directly from Google Maps, while “Better Schools” are defined as those with higher standardized test scores based upon the NECAP Combined Reading & Math assessment.

<b>Variable</b>	<b>Obs.</b>	<b>Mean</b>	<b>Std. Dev.</b>	<b>Minimum</b>	<b>Maximum</b>
<b><i>Dependent Variable</i></b>					
Selling Price (\$)	2,933	238,937	147,632	27,000	2.35mil
<b><i>Housing Amenities</i></b>					
Bedrooms (#)	2,933	3.12	0.74	1.0	5.0
Bathrooms (#)	2,933	1.85	0.78	1.0	5.5
House Size (ft <sup>2</sup> )	2,933	1,846	739.5	500	4,962
Lot Size (ft <sup>2</sup> )	2,933	74,085	331,136	1,040	241 acres
<b><i>Community Characteristics</i></b>					
White Students (%)	2,933	90.6	7.3	61.4	98.7
Median Income (\$)	2,933	57,154	5,827	37,679	62,260
Median Value (\$)	2,933	229,637	34,750	126,000	263,200
<b><i>School Choice Attributes</i></b>					
School Vouchers? (yes=1)	2,933	0.086	0.281	0	1
<b><i>Number of Schools</i></b>					
20 Minute Commute	2,933	2.48	1.41	0	6
30 Minute Commute	2,933	5.24	2.05	0	10
<b><i># of Better Schools</i></b>					
20 Minute Commute	2,933	1.30	1.05	0	5
30 Minute Commute	2,933	2.73	1.70	0	8

**Exhibit #2**  
**Distribution of Vermont School Choice/Voucher Towns**

**Vermont towns that  
tuition students or designate schools**



Source: Vermont Independent Schools Association  
<http://www.vtindependentschools.org/map-of-tuition-towns.html>

**Exhibit #3**

**Descriptive Statistics and Univariate Tests**

This table provides univariate comparisons of sample characteristics disaggregated by school voucher status. All sample transactions took place within the State of Vermont between April 1<sup>st</sup>, 2009 and March 31, 2012. Observations were limited to units containing less than 6 bedrooms, less than 7 bathrooms, and exhibiting a transaction price of more than \$25,000 and less than \$2,500,000. Community characteristics represent school level racial/ethnic diversity and county level income and value metrics. Commuting times are calculated directly from Google Maps, while “Better Schools” are defined as those with higher standardized test scores based upon the NECAP Combined Reading & Math assessment.

<b>Variable</b>	<b>With Vouchers</b>		<b>No Vouchers</b>		<b>T-test of Differences</b>
	<b>Obs.</b>	<b>Mean</b>	<b>Obs.</b>	<b>Mean</b>	
<b><i>Dependent Variable</i></b>					
Selling Price	253	170,255	2,680	245,421	-7.82***
Log(Selling Price)	253	11.94	2,680	12.27	-9.41***
<b><i>Housing Amenities</i></b>					
Bedrooms	253	3.15	2,680	3.12	0.59
Bathrooms	253	1.87	2,680	1.85	0.37
House Size (ft <sup>2</sup> )	253	1,901	2,680	1,840	1.25
Log (House Size)	253	10.46	2,680	9.96	5.56***
Lot Size (ft <sup>2</sup> )	253	88,427	2,680	72,731	0.72
Log(Lot Size)	253	10.48	2,680	9.99	5.84***
<b><i>Community Characteristics</i></b>					
Percent White	253	95.1	2,680	90.2	10.49***
Median Income	253	48,087	2,680	58,010	-29.48***
Median Value	253	179,861	2,680	234,336	-26.54***
<b><i>School Choice Attributes</i></b>					
School Vouchers? (yes=1)	253	1.000	2,680	0.000	-----
<b><i>Number of Schools</i></b>					
20 Minute Commute	253	2.72	2,680	2.46	2.84***
30 Minute Commute	253	4.22	2,680	5.34	-8.40***
<b><i># of Better Schools</i></b>					
20 Minute Commute	253	1.96	2,680	1.24	10.64***
30 Minute Commute	253	2.99	2,680	2.71	2.51**

**Exhibit #4**  
**Determinants of Selling Prices for Vermont Homes**  
**Do School Vouchers Matter?**

This table presents the results of four OLS regressions investigating the determinants of transactions prices for single-family homes across Vermont between April 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2012. In Model 1, the natural log of each home price transaction is regressed exclusively against each unit's observable housing amenities. Model 2 expands the empirical specification to include socio-economic and demographic characteristics of the community in which each home is located. Model 3 adds our focal school voucher metric to the analysis, while finally, Model 4 includes information on the degree of educational choice available to housing market participants with respect to a given property location. All models employ 2,933 observations, include fixed effects for time, and are estimated with robust standard errors clustered on the number of bedrooms and bathrooms contained within each housing unit.

<u>Variables</u>	<u>Base</u> <u>Case</u> <u>(1)</u>	<u>Base</u> <u>Case</u> <u>(2)</u>	<u>Voucher</u> <u>Value</u> <u>(3)</u>	<u>Value per</u> <u>Alternative</u> <u>(4)</u>
Intercept	11.505 (71.5***)	9.825 (40.4***)	9.721 (41.4***)	9.676 (39.6***)
<i>Housing Amenities</i>				
Bedrooms (#)	0.056 (1.78*)	0.076 (3.26***)	0.076 (3.30***)	0.076 (3.34***)
Bathrooms (#)	0.291 (10.8***)	0.242 (10.6***)	0.241 (10.6***)	0.239 (10.6***)
Log House Size (ft <sup>2</sup> )	0.044 (1.67*)	-0.028 (-0.98)	-0.029 (-1.02)	-0.031 (-1.07)
Log Lot Size (ft <sup>2</sup> )	-0.039 (-1.21)	0.111 (3.53***)	0.113 (3.54***)	0.117 (3.65***)
<i>Community Characteristics</i>				
Percent White (%)		-0.009 (-6.16***)	-0.009 (-6.12***)	-0.009 (-6.07***)
Median Income (\$,000s)		0.008 (1.82*)	0.010 (2.17**)	0.010 (2.11**)
Median Value (\$,000s)		0.005 (7.46***)	0.005 (7.38***)	0.006 (7.54***)
<i>School Choice Attributes</i>				
School Vouchers? (yes = 1)			0.057 (2.03**)	
School Vouchers? * # of Schools w/i 20 Minutes				0.030 (5.76***)
F(k; n-k-1)	29.36***	248.90***	286.63***	309.10***
Adjusted-R <sup>2</sup>	0.2029	0.4244	0.4250	0.4264

<b>\$ Value of School Vouchers</b>	-----	-----	<b>\$8,452.62</b>	-----
<b>Marginal Value per Viable School</b>	-----	-----	-----	<b>\$4,379.54</b>
<b>% Price Premium Due to Vouchers</b>	-----	-----	<b>5.87%</b>	<b>3.08%<sup>22</sup></b>

\*\*\* Significant at one percent level; \*\* Significant at five percent level; \* Significant at ten percent level.

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<sup>22</sup> Given the average number of viable options for a given Vermont community is 2.48 schools, these price premiums translate into a \$10,861, or 7.63%, increase in housing values for the typical property.

**Exhibit #5**

**Vermont School Choice Opportunities by Voucher Community**

This table outlines the maximum number of educational choice opportunities available within both 20 and 30 minute (one-way) commuting distances from sample property locations for communities participating in Vermont’s school choice tuition voucher program. Additionally, in columns three and four, only those schools with higher (NECAP) standardized test scores are included in the counts as viable school choice options.

<i>CITY</i>	<i>Schools Within 20 Minutes</i>	<i>Schools Within 30 Minutes</i>	<i>Better Schools Within 20 Minutes</i>	<i>Better Schools Within 30 Minutes</i>
Bakersfield	1	2	1	2
Brownington	2	3	1	2
Chittenden	3	5	3	4
Corinth	0	2	0	1
East Fairfield	0	0	0	0
Elmore	1	3	1	2
Fairfield	2	5	1	3
Grafton	2	4	0	0
Hartland	2	3	2	3
Mendon	4	5	3	4
Middletown Springs	1	3	1	3
Montgomery Center	0	2	0	2
Newport	2	2	1	1
Newport Center	2	2	1	1
North Chittenden	1	3	1	3
Orange	0	2	0	2
Readsboro	0	1	0	0
Rutland	5	6	4	5
Sharon	1	4	0	1
Sheldon	3	5	2	3
St. George	2	4	1	3
Strafford	0	2	0	0
Tinmouth	0	4	0	3
Tunbridge	1	2	0	1
Vernon	1	1	0	0
Wardsboro	1	1	1	1
Washington	3	5	3	3
West Rutland	5	7	0	0
Westfield	0	0	0	0
Westford	2	7	1	3
Westminster	1	4	0	0
Wolcott	3	6	3	6
Average # of Viable Options	1.59	3.28	0.97	1.94
% of Towns with Viable Options	75.0%	93.8%	56.3%	75.0%

## Exhibit #6

### Valuation Effects of the Quantity and Quality of Choices

This table presents the results of four OLS regressions investigating the determinants of transactions prices for single-family homes across Vermont between April 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2012. In Model 1, the natural log of each home price transaction is regressed against each unit's observable housing amenities, community characteristics, and a school choice/voucher indicator variable set equal to one if at least 2 tuition eligible high schools are located within a 20 minute (one-way) commute of the subject property. Model 2 expands the acceptable (one-way) commuting distance to 30 minutes for viable school choice/vouchers. Model 3 alters the analysis to define properties with viable school choice/vouchers exclusively as those with multiple high schools located within a 20 minute (one-way) commute that also exhibit higher (NECAP combined reading and math) standardized test scores than the default (geographically nearest) school. Finally, Model 4 expands our viable school choice/vouchers identifier to include properties with multiple high schools within a 30 minute (one-way) commute that also exhibit higher standardized test scores. All models employ 2,993 observations and include fixed effects for time, with robust standard errors clustered on the number of bedrooms within each housing unit.

<u>Variables</u>	<u>Two</u> <u>Schools</u> <u>within 20</u> <u>minutes</u> <u>(1)</u>	<u>Two</u> <u>Schools</u> <u>within 30</u> <u>minutes</u> <u>(2)</u>	<u>Better</u> <u>School</u> <u>within 20</u> <u>minutes</u> <u>(3)</u>	<u>Better</u> <u>School</u> <u>within 30</u> <u>minutes</u> <u>(4)</u>
Intercept	9.744 (40.4***)	9.719 (41.2***)	9.694 (40.3***)	9.753 (40.9***)
<i>Housing Amenities</i>				
Bedrooms (#)	0.076 (3.30***)	0.076 (3.30***)	0.077 (3.34***)	0.077 (3.32***)
Bathrooms (#)	0.240 (10.6***)	0.240 (10.5***)	0.239 (10.6***)	0.240 (10.5***)
Log House Size (ft <sup>2</sup> )	-0.030 (-1.03)	-0.030 (-1.03)	-0.031 (-1.07)	-0.029 (-1.02)
Log Lot Size (ft <sup>2</sup> )	0.115 (3.57***)	0.114 (3.57***)	0.117 (3.64***)	0.114 (3.56***)
<i>Community Characteristics</i>				
Percent White (%)	-0.009 (-6.10***)	-0.009 (-6.06***)	-0.009 (-6.06***)	-0.009 (-6.12***)
Median Income (\$,000s)	0.009 (1.96*)	0.009 (2.14**)	0.009 (1.96*)	0.008 (1.88*)
Median Value (\$,000s)	0.006 (7.47***)	0.005 (7.40***)	0.006 (7.59***)	0.006 (7.59***)

***Voucher Availability***

Vouchers Viable? (yes = 1)	0.067 (3.16***)	0.061 (2.36**)	0.149 (4.39***)	0.082 (2.45**)
F(k; n-k-1)	312.36***	291.38***	314.40***	304.73
Adjusted-R <sup>2</sup>	0.4229	0.4229	0.4250	0.4233
<b>\$ Premium in Voucher Towns</b>	<b>\$10,878.94</b>	<b>\$7,617.68</b>	<b>\$24,180.92</b>	<b>\$12,804.69</b>
<b>% Premium in Voucher Towns</b>	<b>6.93%</b>	<b>6.29%</b>	<b>16.07%</b>	<b>8.55%</b>

\*\*\* Significant at one percent level; \*\* Significant at five percent level; \* Significant at ten percent level.

## Appendix

### Vermont School Choice/Voucher Options By County

The following table contains a list of all sample towns, cities, unincorporated areas, and gores by county location. Jurisdictions participating in Vermont's school choice/voucher program are identified with an asterisk (\*).

<p style="text-align: center;"><b><u>ADDISON</u></b></p> <p>Addison Bridport Bristol Cornwall Ferrisburgh Leicester Lincoln Middlebury New Haven North Ferrisburgh Orwell Panton Shoreham Starksboro Vergennes Weybridge</p> <p style="text-align: center;"><b><u>BENNINGTON</u></b></p> <p>Arlington Bennington Dorset* East Arlington East Dorset* Manchester* Manchester Center* North Bennington Pownal Readsboro* Shaftsbury Stamford* Sunderlan*d</p> <p style="text-align: center;"><b><u>CALEDONIA</u></b></p> <p>Barnet* Danville Lyndonville Saint Johnsbury* South Ryegate Sutton* Waterford* West Burke West Danville</p> <p style="text-align: center;"><b><u>CHITTENDEN</u></b></p> <p>Burlington Charlotte Colchester Essex Essex Junction Hinesburg Huntington Jericho Milton Richmond Shelburne</p>	<p>South Burlington St. George* Underhill Westford* Williston Winooski</p> <p style="text-align: center;"><b><u>ESSEX</u></b></p> <p>Beecher Falls Canaan Concord Guildhall* Island Pond Maidstone*</p> <p style="text-align: center;"><b><u>FRANKLIN</u></b></p> <p>Bakersfield* East Fairfield* Enosburg Falls Fairfax Fairfield* Franklin Highgate Center Montgomery Center* Richford Saint Albans Sheldon* Swanton</p> <p style="text-align: center;"><b><u>GRAND ISLE</u></b></p> <p>Alburgh* Grand Isle* North Hero* South Hero*</p> <p style="text-align: center;"><b><u>LAMOILLE</u></b></p> <p>Cambridge Eden Elmore* Hyde Park Jeffersonville Johnson Morrisville Stowe Waterville Wolcott*</p> <p style="text-align: center;"><b><u>ORANGE</u></b></p> <p>Bradford Braintree Brookfield Chelsea Corinth* East Randolph East Thetford* Fairlee Newbury Orange*</p>	<p>Post Mills Randolph Randolph Center Strafford* Tunbridge* Washington* Williamstown</p> <p style="text-align: center;"><b><u>ORLEANS</u></b></p> <p>Albany Barton Brownington* Craftsbury Derby Derby Line Irasburg Jay Morgan Newport* Newport Center* North Troy Orleans Westfield*</p> <p style="text-align: center;"><b><u>RUTLAND</u></b></p> <p>Brandon Castleton Chittenden* Danby* East Wallingford Fair Haven Florence Killington Mendon* Middletown Springs* Mount Holly North Chittenden* North Clarendon Pawlet Pittsford Poultney Proctor Rutland* Shrewsbury Tinmouth* Wallingford Wells* West Rutland*</p> <p style="text-align: center;"><b><u>WASHINGTON</u></b></p> <p>Barre Berlin Cabot Calais East Calais East Montpelier</p>	<p>Graniteville Marshfield Middlesex Montpelier Moretown Northfield Plainfield South Duxbury Waitsfield Warren Waterbury Waterbury Center Worcester</p> <p style="text-align: center;"><b><u>WINDHAM</u></b></p> <p>Bellows Falls Brattleboro Brookline Dummerston Grafton* Guildford Londonderry* Newfane Putney South Newfane Townshend Vernon* Wardsboro* West Townshend Westminster* Wilmington Windham</p> <p style="text-align: center;"><b><u>WINDSOR</u></b></p> <p>Andover Bethel Cavendish Chester Hartford Hartland* Ludlow North Springfield Norwich Perkinsville Reading Rochester Royalton Sharon* South Royalton Springfield Stockbridge* Weston* White River Junction Windsor Woodstock</p>
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# **Attachment G**

**Legal Analysis Prepared by Legislative Counsel**



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNCIL

**MEMORANDUM**

To: Representative Oliver Olsen  
From: Jim DesMarais, Legislative Counsel  
Date: October 28, 2016  
Subject: Proposed State Board of Education Rules on Approval of Independent Schools, Private Kindergarten Programs, and Tutorial Programs

**I. Introduction**

This memorandum responds to your request for an analysis of the merits of a legal challenge to the proposed amendment of State Board of Education (SBE) Rule 2200 series and Rule 700 series. These proposed rules address the requirements for approval by the SBE of independent schools, private kindergarten programs, and tutorial programs, and would condition approval on compliance with all State and federal laws and rules applicable to Vermont public schools. Approved status is required in order for a school district to pay tuition to these schools and programs.

In addition to discussing the legal merits of arguments that a party could assert in challenging the proposed rules, this memorandum also identifies a few arguments that a party could assert, without providing an analysis of their legal merits. I understand that these arguments are of less interest to you at this point, but please let me know if you would like me to explore them further.

Please note that this memorandum is preliminary in nature pending our further discussion. We have not fully researched all relevant case law and legislative history.

**II. Current law and SBE proposed rules**

**A. Approval of independent schools providing elementary or secondary education**

Pursuant to 16 V.S.A. § 164(4), the SBE shall “adopt rules for approval of independent schools.” This authority to adopt rules does not distinguish between a Vermont and an out-of-state independent school. Pursuant to 16 V.S.A. § 166, the SBE shall approve an independent school if it determines that the school “provides a minimum course of study pursuant to section 906 of this title and ... substantially complies with the Board’s rules for approved independent schools.” The SBE’s rules must “at minimum” require that an independent school have adequate resources, trained and qualified staff, and appropriate physical facilities. 16 V.S.A. § 166(b).

Under current SBE rules, the SBE considers a number of factors in deciding whether to approve an independent school. These factors include whether: the course of study offered is adequate and age appropriate; the school has adequate support services and physical facilities; and the school employs professional and qualified staff. An independent school is not required to provide special education services, but if it does, it must obtain SBE approval for each category of special education service offered. If the independent school is out-of-state, the school must be accredited or approved by its host state or by an accrediting agency recognized by the SBE. SBE Rules 2224, 2226, and 2228.

Proposed rule 2222.1 sets forth a number of new conditions that would be required for approval of an independent school in Vermont. I address three of these conditions in this memorandum:

1. Special education condition: subdivision (a)(i) would require the independent school to be approved for special education purposes, and rule 2223 would require that in order for the school to receive this approval, it must offer services to students with disabilities in each special education category of disability as defined in SBE rules (there are 13 categories of disability);
2. Open enrollment condition: subdivision (a)(iii) would require the independent school to have an enrollment policy that does not limit the ability of any student to enroll based upon any disability, or race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity pursuant to any applicable State or federal law; and
3. Public school condition: subdivision (a)(iv) would require the independent school to comply with all other State and federal laws and rules applicable to Vermont public schools, including providing a learning and (as applicable) residential environment for students that is safe and healthy, unless otherwise provided by law.

Under proposed rule 2222.2, in order for tuition to be paid to an independent school outside Vermont, the school would have to comply substantially with the approval standards for Vermont independent schools. Therefore, in substance, these conditions would also apply to an out-of-state school.

## **B. Approval of private kindergarten and tutorial programs**

Private kindergarten programs are included in the definition of elementary education. Therefore, the discussion in this memo concerning approval of an independent school applies to kindergarten programs. In addition, 16 V.S.A. § 166(a)(1) states that “the State Board shall approve an independent school that offers kindergarten but no other graded education if it finds, after opportunity for hearing, that the school substantially complies with the Board’s rules for approved independent kindergartens.”

A tutorial program is defined in 16 V.S.A. § 11(27) as “education provided to a student who is placed in a short-term program for evaluation and treatment purposes.” Under

16 V.S.A. § 828, a tutorial program is eligible to receive public tuition dollars if it is “approved by the SBE.” Title 16 does not grant express authority to the SBE to adopt rules for the approval of tutorial programs.

As to both private kindergartens and tutorial programs, under its current rules, the SBE considers a number of factors in deciding whether to approve a program. For example, as to kindergarten programs, the SBE considers whether the course of study is adequate and age appropriate; the school is in compliance with health and safety requirements; the school has adequate physical facilities; and the school employs professional and qualified staff. SBE Rule 2272. As to tutorial programs, the SBE considers whether the instruction is age and ability appropriate; the program has adequate support services and physical facilities; and the program employs professional and qualified staff. SBE Rule 2230.3.

Under proposed rule 2270, all three of the conditions listed in this memo would apply to private kindergarten programs and under proposed rule 2226.2 two of those conditions (the public school compliance and special education conditions) would apply to tutorial programs. Therefore, as with the approval of independent schools, under the proposed rules, private kindergarten and tutorial programs would be subject to substantially the same new requirements.

### **III. Legal Discussion**

#### **A. Approval of independent schools providing elementary or secondary education**

Pursuant to 16 V.S.A. §§ 164 and 166, the SBE has authority to adopt rules concerning approval of independent schools. There is no statute that explicitly prohibits the SBE from adopting the proposed rules. For example, there is no current law that explicitly states that the SBE shall not require an approved independent school to have open enrollment policies. Therefore, it could be argued, and I assume the SBE will argue, that it has authority to issue the new rules concerning approval of independent schools.

However, the proposed rules could still be challenged, see 16 V.S.A. § 807, on four grounds: (1) the proposed rules exceed the authority of the SBE; (2) the proposed rules are contrary to the General Assembly’s intent; (3) the delegation of rulemaking authority by the General Assembly to the SBE is contrary to the Vermont Constitution as a violation of either the nondelegation doctrine or the separation of powers clause (Vt. Const. Ch. II, § 5); and (4) as applied to an out-of-state independent school, the proposed rules have an extraterritorial effect and are invalid under the Commerce Clause of the U.S. Constitution (U.S.C.A. Const. Art. 1 § 8, cl.3).

This memorandum discusses the legal merits of the first two grounds only.

#### **1. The proposed rules exceed the authority of the SBE**

“[A]gency actions, including the promulgation of rules, enjoy a presumption of validity.” Vermont Assoc. of Realtors, Inc. v. State, 156 Vt. 525, 530 (1991). However, rules must be “reasonably related to its enabling legislation in order to withstand judicial scrutiny.” In re Club 107, 152 Vt. 320, 322 (1989). The Vermont Supreme Court has stressed that

“an administrative agency’s power to promulgate regulations may extend only as far as its legislative grant of authority.” Martin v. State, 175 Vt. 80, 87 (2003).

There is no language in 16 V.S.A. §§ 164 and 166 that explicitly limits the breadth of the authority granted to the SBE to adopt rules concerning approval of independent schools. Section 166 only requires that the SBE rules at a minimum include certain elements. While this grant of authority is broad, it is not necessarily unconstrained. A court may look beyond the scope of the authority to the spirit and purpose of the law. *See In re Club 107*, at 322.

The General Assembly has adopted laws in Title 16 that apply only to public schools and laws that apply equally to both public and independent schools. For example, public schools are required to hire licensed teachers, to provide special education services to all eligible resident students, and to collect various forms of data for filing with the AOE. Approved independent schools are not subject to these requirements. On the other hand, both public and approved independent schools are subject to the hazing, harassment, and bullying prevention provisions of Title 16. Exhibit A contains further examples of these differences.

Therefore, there is a good argument that (i) the distinctions made by the General Assembly throughout Title 16 between public and independent schools establish a statutory scheme that reveals a legislative intent that independent schools should not be subject to all of the public school requirements; and (ii) the proposed rules contravene this statutory scheme and intent by requiring, for the first time, that approved independent schools satisfy the special education, open enrollment, and public school conditions that currently apply only to public schools.

As the Supreme Court stated in Martin, rules may extend only as far as its legislative grant of authority, and an administrative agency should not use a general grant of authority to promulgate rules that are contrary to legislative intent. 175 Vt. at 87-88. “The fundamental principle served by these tenets is the separation of powers.” *Id.*, at 87.

## **2. Legislative intent**

### **(a) Standard of review**

If the rules proposed by the SBE were challenged, the court would seek to determine whether the rules are contrary to the General Assembly’s intent.

Courts apply two principles for interpreting whether a statute is contrary to legislative intent. The same principles apply for interpreting whether a rule is contrary to legislative intent. Slocum v. Dep’t of Social Welfare, 154 Vt. 475, 478 (1990).

The first principle of interpretation is that “...we look first to the statute’s language. We will enforce the plain meaning of the statutory language where the Legislature’s intent is evident from it.” In re Appeal of Carroll, 181 Vt. 383, 387–88 (2007).

The second principle is that if doubts exist as to the intent of the plain meaning, “‘the real meaning and purpose of the Legislature is to be sought after and, if disclosed by a fair and reasonable construction, it is to be given effect.’ The intent should be gathered from a consideration of ‘the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law.’” In re Appeal of Carroll, 181 Vt. 383, 387–88 (2007). (internal citations omitted)

**(b) Plain meaning**

Therefore, a court would start by determining if the plain meaning of 16 V.S.A. §§ 164 and 166 indicated that the SBE exceeded its authority. As discussed in this memo, there is no language in these sections that limits the breadth of the authority granted to the SBE to adopt rules concerning approval of independent schools. Section 166 only requires that the SBE rules, at a minimum, include certain elements.

A party arguing for the validity of the proposed rules would argue that the General Assembly’s intent is evident from the plain meaning of these sections, which do not constrain the scope of the SBE’s rulemaking authority. A party arguing against the validity of the proposed rules would argue that the General Assembly’s intent is not clear from the plain meaning of these sections. The basis for this argument may be that section 166 sets out minimum requirements that provide some indication of the intended limited scope of the authority granted, or that the scope must inherently be limited so as to at least prevent the SBE from adopting arbitrary or capricious conditions for approval.

In re Estate of Gerald Thomas COTE, 176 Vt. 293, 296 (2004) held that “[h]ere, however, both parties’ interpretations are plausible, and therefore we must ascertain legislative intent through consideration of the entire statute, including its subject matter, effects and consequences, as well as the reason and spirit of the law. All relevant parts of the applicable statutory scheme are to be construed together to create, if possible, a harmonious whole.” (internal citations omitted)

Whether a court would look beyond the plain meaning of 16 V.S.A. §§ 164 and 166 is unclear. A court may find from a literal reading of these sections that the General Assembly intended to grant broad authority to the SBE, and not look further for other evidence of legislative intent. On the other hand, a court following In re Estate of Gerald Thomas COTE may find two plausible interpretations of these sections, and therefore go on to ascertain legislative intent through consideration of the entire statutory scheme and spirit of the law. I believe that the better argument is that a court would look beyond the plain meaning, but cannot say with a degree of certainty what a court may decide.

**(c) Further consideration of legislative intent**

If a court decides to look beyond the plain meaning of 16 V.S.A. §§ 164 and 166, it would consider other evidence of legislative intent.

As discussed, the proposed rules would require an approved independent school to comply with all of the requirements that have been, by statute, imposed by the General

Assembly only on public schools. If the General Assembly intended these statutes to apply to an approved independent school, it could have done so.

In addition, the General Assembly has considered, and rejected, legislation that would have require independent schools to comply with some of the same requirements imposed on public schools. The General Assembly has also considered, and rejected, legislation that would have limited student access to out-of-state approved independent schools. However, courts, in assessing legislative intent, generally do not to give weight to bills that were not enacted. Tarrant v. Department of Taxes, 169 Vt. 189, 202 (1999). Therefore, it is doubtful that a court in reviewing the proposed rules would give significant weight to the fact that these bills were not passed. Despite the weakness of this argument from a legal perspective, it may be logical to contend that where members of the General Assembly have proposed, but the General Assembly has declined, to impose certain requirements on independent schools, it is perhaps inappropriate for a regulatory body to do so.

Finally, in determining legislative intent, a court should also consider the “effects and consequences” of a statute or rule. In re Estate of Gerald Thomas COTE, 176 Vt. 293, 296 (2004); In re Appeal of Carroll, 181 Vt. 383, 387–88 (2007). The imposition of the special education, open enrollment, and public school conditions would likely have a significant impact on the ability of approved independent schools to carry out their missions—especially those with specialized missions—and would increase their compliance costs, perhaps substantially. These schools may as a result have to change their missions or may no longer be able to operate.

Given that the proposed rules would require an approved independent school to comply with all of the requirements that have been, by statute, imposed by the General Assembly only on public schools and the potential significant impact these rules may have on the ability of approved independent schools to carry out their missions, there is a good argument that the proposed rules are contrary to legislative intent. As noted, a court would have to look beyond the plain meaning of 16 V.S.A. §§ 164 and 166 to consider this argument.

## **B. Conditions for tutorial program approval**

Tutorial programs are limited in time and may be specialized in nature in order to meet the needs of certain students. In considering legislative intent, a court would likely consider these limitations in contrast to the breadth of the requirements imposed by the public school and special education conditions.

Given the lack of clear statutory authority for the SBE to adopt rules for the approval of tutorial programs and the specialized nature of these programs, there are good arguments that the proposed rules exceed the authority of the SBE and are contrary to legislative intent, in line with the arguments made in this memo with respect to approved independent schools.

## Exhibit A

Examples of laws in Title 16 that apply only to public schools and laws that apply equally to both public and independent schools:

*Statutes that apply only to public schools*

- the SBE is empowered and required under section 164 to (i) make regulations governing attendance and records of attendance of all students and the department of students attending public schools; and (ii) if deemed advisable, determine educational standards for admission to and graduation from public schools;
- public schools are required to meet the education quality standards set out in section 165;
- public schools are required to comply with the periodic release time requirements set out in chapter 24;
- public schools are required to comply with the school year and school day requirements set out in section 1071.

*Statutes that apply both to public schools and independent schools*

- the flexible pathways to secondary school completion provisions of chapter 23, subchapter 2;
- the hazing, harassment, and bullying prevention provisions of chapter 9, subchapter 5; and
- the driver training course requirements of section 1045.

Bill Talbott, CFO and Deputy Secretary of the AOE, gave testimony to the House Committee on Education on February 3, 2015 that described the differences in public and independent school requirements. His testimony is linked below:

<http://legislature.vermont.gov/assets/Documents/2016/WorkGroups/House%20Education/Vermont%20Independent%20Schools/W~William%20Talbott~Independent%20Schools%20and%20Public%20Schools%20%E2%80%93%20Differences%20in%20Requirements~2-3-2015.pdf>

## **Attachment H**

# **Summary of Public School Requirements Prepared by AOE**



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**TESTIMONY PROVIDED TO: House Education Committee**  
**FROM: Bill Talbott, CFO and Deputy Secretary, Agency of Education**  
**TOPIC: Independent Schools and Public Schools – Differences in Requirements**  
**DATE: February 3, 2015**

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The House Education Committee requested information from the Agency as to how rules affect independent schools and public schools differently. What follows is a list of examples of the mandates that are required of public schools and not independent schools, from the Agency of Education staff. This question relates to work across virtually the entire agency (programmatic, fiscal, licensure, etc.). It may not be an entirely exhaustive list.

**Fiscal Requirements**

1. Report financial data to Agency of Education
2. Annual audits
3. Annual meetings and budget votes
4. Shall go out for public bids for most costs in excess of \$15,000
5. Shall provide all text books, learning materials, equipment, and supplies
6. Shall return an audited surplus to the voters either as a revenue or as a voter approved reserve fund
7. Shall add an audited deficit to the next adopted budget unless voters choose to repay the deficit over a period of up to three years

**Educator Licensure and Evaluation Requirements**

8. Teachers must be licensed and reports of unprofessional conduct must be made to the Secretary, as may be required, pursuant to the reporting requirements at 16 V.S.A. Sec. 1699.
9. Special Educators must be licensed (independent schools approved for special education categories by the Agency must deliver those services through a licensed special educator.)
10. Needs-based professional development based on State Board of Education educational standards and performance goals
11. Shall provide educator licensure information and school scheduling to determine Highly Qualified Teacher analysis (public schools must do so pursuant to Title statutes and the receipt of Federal funds which independent schools are not eligible.)
12. Teacher and leader evaluation models would be evaluated by the Agency.

**Programmatic and Reporting Requirements**

13. Special education shall be provided to all eligible resident children. (independent schools approved by the Agency are required to do this)
14. Special education audits must be conducted (independent schools approved by AOE are required to do this)

15. Multiple and varied data collections (many of these are required pursuant to receipt of funding):
  - a. Act 113 School Safety and Disciplinary Report
  - b. Annual Statistical Report Data Collection
  - c. Educator Census Data Collection
  - d. Education Support System Survey
  - e. Health Service Screening
  - f. Office of Civil Rights Survey (federal)
  - g. Perkins Grant Funding Report (only applicable for independent schools serving as a career and technical center)
  - h. Restrictive Behavioral Intervention Survey
  - i. Safe and Healthy Schools Data Collection
  - j. School Readiness Project Survey
  - k. Safe and Drug Free School Report
  - l. School Arts Survey
  - m. Student Educator Course Transcript Data (federal)
16. Shall abide by the Family Medical Leave Act
17. Alcohol and drug reporting
18. Annual action plan to improve student performance within school
19. Shall administer state and federal assessments (for accountability purposes)
20. Shall maintain computer-based information systems to record and report data
21. Shall report annually to the public
22. Shall ensure students are furnished educational services in a nondiscriminatory fashion in accordance with state and federal entitlements (except when independent schools serve as a CTE center)
23. Shall partake in public high school choice
24. Shall offer 10 hours of high quality prekindergarten education for 35 weeks during the academic year
25. Flexible pathways
  - a. High school completion program
  - b. Personalized learning plans (public funded students are eligible for dual enrollment vouchers and early college and are required to have a PLP for that purpose.)
  - c. Dual enrollment
  - d. Early college
26. Shall accept for enrollment any resident individual who does not have a high school diploma
27. Shall educate all state-placed pupils within a district
28. Shall appoint a truancy officer
29. Shall operate a food program to make lunch and breakfast available as well as a summer food program

END