

April 11, 2023

To: Vermont State Board of Education

From: EQS Committee (Kim Gleason, Tammy Kolbe, & Tom Lovett)

Re: Extending Vermont's Education Quality Standards to Independent Schools Approved to Receive Public Tuition

A key issue considered by the EQS Committee charged with making recommendations to the State Board of Education (SBE) regarding revisions to Rule Series 2000 (Education Quality Standards, EQS) was *to whom* the rule should apply. The Committee agreed that this is an issue that should be resolved by the full SBE and the Committee did not make a recommendation on this issue. The Committee did vote unanimously in favor for all other recommended changes that are included in the draft document provided to the full SBE for consideration.

The purpose of this memorandum is to provide the SBE with additional background and options that the Committee identified as starting points for discussion by the full SBE.

## Background

Currently, the EQS is commonly understood to apply to Vermont public schools (16 VSA Section 165(a)) and approved independent schools that opt in to participating in the education standards process (16 VSA Section 165(f)). The Act 1 Working Group recommended that the EQS be revised to apply universally, and equally, to both Vermont's public and approved independent schools.

In testimony provided by the Act 1 Working Group's co-chair, the EQS Committee learned that the recommendation to extend the EQS to approved independent schools was grounded in the Working Group's understanding that Act 1 requires that all Vermont children be afforded educational opportunities that are equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive – not just those attending public schools.<sup>1</sup> The Working Group identified the EQS standards as the appropriate regulatory framework to accomplish this goal, particularly EQS sections that address curricular content, curriculum coordination, instructional strategies, and instructional materials.

The Committee also took testimony from representatives from Vermont public school districts and supervisory unions, the Act 1 Working Group, and independent schools that provided support for the premise that the principles and goals of Act 1 should apply to public and independent schools that are approved for public tuition.<sup>2</sup> Additionally, the Committee heard from representatives for the entities that accredit Vermont's

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<sup>1</sup> See EQS Subcommittee meeting minutes for November 15, 2022.

<sup>2</sup> ///Add references to meeting minutes here.

independent schools that it is possible to include additional requirements for schools seeking accreditation that reflect Act 1's principles and goals.<sup>3</sup>

### **EQS Committee Considerations**

The Committee agreed with the Act 1 Working Group that all Vermont students should be afforded an equitable, anti-discriminatory, culturally responsive, anti-racist, and inclusive education and that Act 1's principles and goals should apply to schools that receive public funding, whether they are a public school or an approved independent school. At the same time, the Committee recognized that:

- 1) Existing statute (16 VSA 165) may not allow the EQS, in its entirety, to apply to approved independent schools, except those that opt in according to the provisions articulated in Section 165(f).
- 2) Other statutes articulate common curricular, school climate, and facilities requirements for both public and independent schools (e.g., 16 VSA Section 164(9), 16 VSA Section 906, 16 VSA Section 1161) and that these other sections in the law may provide statutory authority to apply sections of the EQS to approved independent schools.
- 3) State Board of Education Rule 2200 (Independent School Program Approval) provides a regulatory framework for independent school approval that might be expanded to include operating and quality standards for independent schools.
- 4) When describing the duties of the Act 1 Working Group, Act 1 requires the Group to review standards of student performance adopted by the SBE under 16 VSA Section 164(9) (standards for student performance in appropriate content areas) and not 16 VSA Section 165 (Education Quality Standards). The Working Group was authorized to review other state statutes, SBE rules, and school district and supervisory union policies that concern or impact standards for student performance or curriculum used in schools.

### **Committee Deliberations**

The Committee recognized that the Act 1 Working Group's recommendation to extend the EQS to approved independent schools was a significant change to the current regulatory framework for education in Vermont.

Additionally, while the Committee agreed that while it is important and necessary to ensure that Act 1's principles and goals apply universally and equally to public and approved independent schools, based on its review of existing statute the Committee recommends that the SBE reject the Act 1 Working Group's recommendation that the EQS be extended, in its entirety, to approved independent schools. Not all sections of the EQS are related to Act 1 (e.g., 16 VSA Sections 2121.1& 2121.2, which address

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<sup>3</sup> ///Add reference to meeting minutes here.

requirements for school leadership and staff) and extending the entire rule to approved independent schools would create substantially new requirements for these schools that fall outside the SBE's existing statutory authority.

Instead, the Committee agreed that a different regulatory approach is needed to apply the Act 1 Working Group's recommendations to approved independent schools.

### **Options for SBE Consideration**

The Committee identified two options for how the SBE might implement the Act 1 Working Group's recommendations for approved independent schools. Specifically:

**1. Selectively apply sections of the EQS to independent schools approved to receive public tuition.**

The Subcommittee believes that 16 VSA Section 165 limits the SBE's ability to extend the EQS to all approved independent schools. However, it is also the case that other statutes create common curricular (16 VSA 906; 16 VSA 164(9)), school climate and facilities requirements (16 VSA 1161(a)) and federal and state entitlements; nondiscrimination (federal Protection of Pupil Rights Act, (20 U.S.C. § 1232h), for public and approved independent schools. In some instances, these sections are already referenced in the EQS and in other instances, while there is no direct reference, there is substantive alignment between the EQS and existing statute.

One option the SBE could consider is to selectively apply sections of the EQS, consistent with these other statutes, to approved independent schools – specifically: Sections 2113, 2114, 2120.1, 2120.5, and 2122.1.

This could be accomplished by inserting the following sentence in Section 2112:

*Pursuant to 16 V.S.A. § 906, 2019 Act No. 1, 16 V.S.A. § 1161 a(a), Sections 2113, 2114, 2120.1, 2120.5, and 2122.1 shall apply equally to public schools and approved independent schools that are eligible to receive public tuition, unless otherwise noted here in.]*

The advantage to this approach is that these sections of the EQS would apply universally to public and approved independent schools, according to a common regulatory framework. That said, this approach represents a departure from the current approach to regulating approved independent schools through a recurring approval process (as articulated in Rule 2200).

**2. Revise Rule 2200 to include new requirements for independent schools that mirror changes to the EQS recommended by the Act 1 Working Group.**

Alternatively, Rule 2200 could be reopened and revised to articulate a new set of standards for approved independent schools that are consistent with Act 1's

principles and goals. 16 VSA 164(14) provides the SBE with broad authority to adopt rules for independent school approval. Language identical to what is incorporated in the EQS, along with a compliance process (e.g., annual attestation) separate from periodic school approval, could be inserted into Rule 2200.

This approach has the advantage of extending the existing regulatory framework for independent schools to include recommendations made by the Act 1 Working Group. That said, it would require the SBE to align and maintain two sets of rules, one for public schools and another for independent schools.

The EQS Committee was unable to reach consensus on which option was most appropriate for applying the Act 1 Working Group's recommendations to approved independent schools.

That said, as noted above, the Committee was unanimous in its recommendation that the SBE develop regulations that will ensure that Act 1's principles and goals apply universally, and equally, to public and approved independent schools.