

remove any agency from the list of recognized accrediting agencies at any time, after finding that it no longer meets one or more of the criterion listed above.

(c) The Board shall continue to recognize any accrediting agency that accredits an approved independent school in Vermont as of April 1, 2024 until **October 1, 2024**.

Section 2228. Tuition from Public Funds

2228.1. Tuition for Approved Schools in Vermont

Tuition shall not be paid from public funds to any approved independent elementary or secondary school in Vermont unless the school satisfies the requirements in Section 2223 (Requirements to Operate an Approved School) and Section 2224 (Application and Reapplication for Approval; Approval Process), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Tuition) and Section 2231 (Written Agreements Required) Tuition shall not be paid if a school's approval status has been suspended unless and until its approval status has been restored. Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

(a) There is an order from a court or from a due process hearing pursuant to Subsection 2365.1.6 (Due Process Complaint Procedures) requiring such payment; or

(b) The Secretary has approved an exception for a placement in an independent school pursuant to Subsection 2230.1 (Exceptional Circumstances – Approval Process).

2228.2. Tuition for Out-of-State Schools

Public tuition to be paid to an independent school located out of state shall be made in accordance with 16 V.S.A. § 828.

Section 2229. Approval to Receive Public Tuition; Special Education Approval

For the purposes of this Section 2229 and Section 2231, the term "independent school approved for public tuition" shall mean an approved independent school that has been determined by the Board to be eligible to receive public tuition because it meets the requirements of both Sections. Any reference to school in these Sections shall also mean "independent school approved for public tuition," unless the context indicates otherwise.

2229.1. Enrollment: Requirements for Approved Independent Schools, Students, and LEAs

(a) Each **independent school approved for public tuition** shall maintain, follow, and distribute to prospective students, their families, or members of the student's educational support team, a written enrollment policy, which shall, at minimum, provide the following:

1. That the student or the parent of a student seeking to attend the school shall voluntarily submit an application;

2. Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;

3. The school's process for making enrollment decisions when the number of applicants exceeds capacity; and

4. That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of the student's race, gender, color, creed, religion, national origin, marital status, sexual orientation, gender identity or disability, or any other characteristic protected by state or federal law.

(b) Upon a student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The independent school approved for public tuition and the LEA shall follow the procedures in Subsection 2229.4 (Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), after which the student shall be enrolled in the approved school or, upon the decision of the hearing officer in Subsection 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

(c) When a publicly funded student seeks to attend an independent school approved for public tuition after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Subsection 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to Subsection 2229.4(f), below.

(d) This Subsection, 2229.1, shall not apply to a therapeutic independent school.

2229.2. Staffing

An independent school approved for public tuition shall demonstrate the ability to serve students with disabilities by employing or contracting with staff who have the required licensure to provide special education services. The school is not required to demonstrate that it has the resources to provide every type of special education service in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools approved for public tuition in Vermont.

2229.3. Assurances

An independent school approved for public tuition shall demonstrate that it has the ability to serve all students with disabilities by:

(a) Demonstrating an understanding of special education requirements, including:

1. Provision of a free and appropriate public education in accordance with federal and state law,
2. Provision of education in the least restrictive environment in accordance with federal and state law,
3. Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and state law, and
4. Procedural safeguards and parental rights, including discipline procedures, specified in federal and state law;

(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress;

(c) Employing or contracting with staff who have the required licensure to provide special education services;

(d) Meaningfully participating in a student's IEP meetings, to include making every effort to attend scheduled meetings;

(e) Agreeing to communicate with the responsible LEA concerning:

1. Development of, and any changes to, the IEP,
2. Services provided under the IEP and recommendations for a change in the services provided,
3. The student's progress,
4. Maintenance of the student's enrollment in the independent school, and
5. Identification of students with suspected disabilities; and

(e) Committing to participate in dispute resolution as provided under federal and state law and the Board's rules relating to special education dispute resolution.

2229.4. Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools

(a) The LEA shall be responsible for the administration of the IEP of a publicly funded student enrolled in an independent school approved for public tuition

(b) Upon the acceptance for enrollment of a student with an individualized education program in an independent school approved for public tuition, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP

(b) The LEA and the independent school approved for public tuition, together with the student's IEP team, shall work collaboratively to ensure the student's services are provided in accordance with state and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the Board that the LEA and the school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the school upon request.

(c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the independent school approved for public tuition, notwithstanding Subsection 2364.3(a)(2) (Placements). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services. Independent schools approved for public tuition shall follow all applicable federal and state laws regarding the change in placement of a student receiving special education services.

(d) The student's special education and related services shall be provided in accordance with the student's IEP and in the least restrictive environment.

(e) To ensure the provision of services in the student's IEP, the independent school approved for public tuition and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:

1. The school recruiting and hiring special education or other professional or paraprofessional staff;
2. The school contracting directly with service providers to provide the services at the school if the services are not otherwise available at the school;
3. The school contracting with the LEA to provide the services; and
4. The LEA providing the services at a public school operated by the LEA or another public school.

(f) If there is a dispute between the LEA and the independent school approved for public tuition over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing

officer, the costs of which shall be borne equally between the LEA and the school, within 30 days of the impasse.

(g) If the hearing officer determines the independent school approved for public tuition is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The independent school approved for public tuition shall not be subject to any disciplinary action or revocation of its approval by the Board under Subsection 2226.2 (Revocation or Suspension of Approval) due to its failure to enroll or continue to enroll the student.

(h) This Subsection, 2229.4, shall not apply to a therapeutic independent school.

2229.5. Payments for Special Education Service Costs Delivered by Out-of-State Programs

(a) Subject to the provisions of 16 V.S.A §828, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved under the rules of its jurisdiction for the purpose of providing special education and related services to children with disabilities within its jurisdiction. Any limitation by the jurisdiction on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

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

2229.6. Approval Procedures to Receive Public Tuition

(a) Application for public tuition approval shall be made at the time of application under Sections 2224 (Application and Reapplication for Approval; Approval Process). A school that has already obtained approval from the Board may at any time submit an application for public tuition approval to the Secretary.

(b) The procedures for public tuition approval shall be the same as those for approval in accordance with Section 2224 (Application and Reapplication for Approval; Approval Process). To the extent possible, these procedures shall occur simultaneously.

2229.7. Duty to Notify

After receiving approval for public tuition, the school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may recommend that the Board change the school's approval for public tuition purposes. The Secretary shall employ the same procedures described in Subsection 2226.2.2 (Investigation; Due Process Hearing) to recommend a change to a school's approval status. The Board shall provide a hearing on the matter in accordance with Subsection 2226.2.2 and the requirements of Sections 1230, et seq.

2229.8. Minimum Level of Service

An independent school approved for public tuition 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 Section 2231 (Written Agreements Required).

Section 2230. Placement Prohibition

No responsible agency, as defined by Subsections 2360.3 (Child Find), or LEA shall make a special education placement in an approved independent school ineligible to receive public funds pursuant to the conditions in Section 2229 (Approval to Receive Public Tuition; Special Education Approval), unless the placement is pursuant to:

- (a) Subsection 2230.1 (Exceptional Circumstances – Approval Process);
- (b) A court order; or
- (c) A hearing officer's order.

2230.1. Exceptional Circumstances – Approval Process

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in a school that is approved pursuant to Section 2224 (Application and Reapplication for Approval; Approval Process) but that has not been approved to receive public tuition under Section 2229 (Approval to Receive Public Tuition; Special Education Approval). In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the Board pursuant to 16 V.S.A. § 828.

(a) Exceptional circumstances exist when:

1. After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Section 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and
2. The proposed placement is deemed appropriate by the child's IEP team.

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

Section 2231. Written Agreements Required

2231.1 Agreement as to Costs

(a) In order to obtain approval to receive public tuition, an approved school shall assure the Board that, prior to enrolling a child pursuant to Subsection 2229.1 (Enrollment: Requirements for Approved Independent Schools, Students, and LEAs), the school will enter into a written agreement with the LEA

committing to the requirements set forth in Subsection 2229.3 (Assurances) and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.

(b) The Secretary shall consult with independent schools in the state and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved school for public tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.

(c) An independent school approved for public tuition that enrolls a student with an IEP pursuant to Subsection 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.

(d) An independent school approved for public tuition that enrolls a student under Subsection 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

(e) The Secretary may withhold, or direct an LEA to withhold, payment under this subdivision pending the Secretary's receipt of required documentation under this subdivision, or may withhold, or direct an LEA to withhold, an amount determined by the Secretary as not reasonable in relation to the special education services provided by the school.

2231.2. Agreement as to Non-Instructional Services.

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

Section 2232. Rate Approval for Therapeutic Approved Independent Schools.

(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.

(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.

(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.

(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:

1. Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:

- (A) Salaries for all employees and full-time equivalents, as applicable,
- (B) Program-related Contractual Services,
- (C) Operations-related Contractual Services,
- (D) General Operating,
- (E) Program,
- (F) Travel/Transportation,
- (G) Building – Direct,
- (H) Building – Allocated,
- (I) Admin I – Allocated,

(J) Admin II – Allocated, and

(K) Fringe – Allocated.

2. The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.

(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.

(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.

(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:

1. Establish standards for developing and applying a database of comparable information to be utilized in rate determinations and publish the standards on the Agency's website;
2. Annually update the database of comparable information; and
3. Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.

(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).

(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.

(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.

(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the Board in accordance with the requirements of Section 1230, et seq. Alternatively, a therapeutic school may appeal to the Board pursuant to Section 1230, et seq. without first seeking reconsideration by the Secretary. The Board's determination of the appeal shall be final.

Section 2233. Standards and Regulations.

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

Section 2234. Corrections Education Program

The Secretary shall conduct a review of the Corrections Education Program in accordance with the procedures and standards contained within Sections 2220 through 2229.

Section 2235. Approval of Tutorial Programs

Statutory authority: 16 V.S.A. § 828.

2235.1. Definitions

"Tutorial program" means education provided to a student who is placed in a short-term program that is not administered by an 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 Secretary may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.

2235.2. Procedures for Approval

2235.2.1. Application

An application for approval or renewal of approval as a tutorial program 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's enrollment, including a statement of whom it is designed to serve.

(e) A description of the plan of organization for the tutorial program.

(f) A tutorial program calendar.

2235.2.2. Review

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

2235.2.3. Report to the Secretary

The appointed committee shall present a written recommendation regarding possible approval to the Secretary. 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 Secretary to the State Board.

2235.2.4. Board Action

The Secretary shall recommend approval or disapproval for action by the Board at its next regular meeting. Officials of the tutorial program shall be notified of this meeting date.

2235.2.5. Term of Approval

The 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.

2235.2.6. Renewal

Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when a 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.

2235.2.7. Denial, Revocation, or Suspension of Approval

Prior to recommending denial, revocation, or suspension of approval to the Board, 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. 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.

2235.2.8. Standards and Regulations

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

2235.3. Criteria for Approval

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

- (a) 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 subsection (j) below.
- (b) The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- (c) The tutorial program's facilities and operation comply with local, State, and federal requirements pertaining to the health and safety of children.
- (d) 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 to which they are assigned.
- (e) 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.
- (f) All professional staff have relevant experience and/or training in the duties to which they are assigned.
- (g) The tutorial program maintains a register of the daily attendance of each of its students and reports the attendance to the responsible LEA.
- (h) 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.
- (i) The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- (j) 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 the Department for Children and Families, community mental health centers, and family-parent child centers by:
- (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.
 - (2) Reviewing the IEP, the child's needs, and the tutorial's own ability to implement the IEP.
 - (3) Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, the child is suspected of having a disability.

(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.

(5) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services.

(6) Implementing IEPs.

(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.

(k) 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 each of the following areas:

(1) Admissions.

(2) Discipline.

(3) Significant change in placement.

2235.4. Rate Approval for Non-Residential Tutorial Programs

(a) Each tutorial program shall annually report its 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 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.

(c) The Secretary shall review each tutorial program's annual rate report. 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 school districts and the Agency would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory, the Secretary shall refer the matter to the Board.

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

(2) The Board's determination shall be final.

Section 2236. Approval of Distance Learning Schools

Section 2237. Statutory Authority

16 V.S.A. § 166.(b)(6).

Section 2238. Definition

A "Distance Learning School" means an independent school that offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means and that, because of its structure, does not meet some or all the rules of the Board for approved independent schools and is ineligible to receive public tuition payments pursuant to 16 V.S.A. § 166.(b)(6).

Section 2239. Procedures and Standards

The distance learning school shall meet the procedures and standards set forth in Rules 2220-2228 above that, because of its structure, can be applied, and the following rules:

- (a) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (b) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of the Vermont Statutes Annotated.
- (c) The distance learning school offers an educational program that 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.
- (d) 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.
 - (2) Measure student progress to ensure that students continue to benefit from such instruction.
- (e) 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.
- (f) The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.
- (g) Tuition:
 - (1) Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from school districts pursuant to 16 V.S.A. § 166.(b)(6).

(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.

(h) In the event that the school closes, the distance learning school has policies for:

(1) Tuition adjustment or refund.

(2) Preservation and release of student records.

Section 2240. Certification of Post-Secondary Schools

2240.1. Definitions

(a) "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.

(b) "A post-secondary school whose primary operation is in the State of Vermont" means a post-secondary school that offers the majority of its courses in an institution in Vermont or that maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.

(c) "Confer a degree" and "degree-granting authority" means the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school that offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

(d) "Business organization", for the purposes of 16 V.S.A. § 176.(d)(1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

Section 2241. Certification of Post-Secondary Schools Chartered in Vermont

2241.1. Statutory Authority

16 V.S.A. § 176.

2241.2. [Repealed]

2241.3. Application for Certificate of Approval

A person desiring a certificate of approval or certificate of degree-granting authority from the Board shall file an application with the Secretary prior to offering post-secondary credit-bearing courses or programs and prior to

admitting its first student. The application shall indicate the certification sought and shall include a description of the school that contains the following:

- (a) The name, location and legal nature of the school, including a copy of the articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) that the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school, including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's physical plant, library, and equipment.
- (i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.
- (j) A statement regarding the school's professional staff, including its policies regarding appointment, promotion, tenure (if applicable), dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) The official website address, a copy of all catalogues or brochures publicly distributed by the school, and a copy of advertisements sponsored by the school to recruit students or solicit funds.
- (m) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

Section 2242. Certification of Post-Secondary Schools Not Chartered in Vermont

2242.1. Statutory Authority

16 V.S.A. § 176.a.

2242.2. Application for Certificate of Approval

A person desiring a certificate of approval from the Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under Subsection 2240.1, subsection (c). The application shall include a description of the school that contains the following:

- (a) The name, location, and legal nature of the school, including a copy of articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) that the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's physical plant, library, and equipment.
- (i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.
- (j) A statement regarding the school's professional staff, including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student

loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.

(p) Documentation of accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education.

2242.3. Registration

A post-secondary school seeking continued operation in Vermont after initial approval from the Board shall register with the Agency within one-year of receiving approval from the Board and annually thereafter on or before September 1. Registration shall be on a form prescribed by the Secretary.

Section 2243. Review Process for Post-Secondary Schools Chartered In and Outside Vermont

2243.1. Review of Application for Certificate of Approval for Schools Chartered In and Outside Vermont

Upon receipt of an application for a certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents by, if necessary, visiting the school. The team shall present a written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of the recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the Board.

2243.2. Review of Application for Certificate of Degree Granting Authority

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of Subsection 2243.6, subsection (a) are met, the Secretary shall contact the Vermont Higher Education Council, which shall review the application and determine the accuracy of its contents by, if necessary, visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Vermont Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the Board. The Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

2243.3. Renewal of Certification

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the Board acts on further certification. Any school seeking renewal that has obtained initial approval to offer or operate a program of college or professional education for credit or degree on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the U.S. Department of Education, in order to be considered eligible for renewal by the Board within the first 10 years of operation.

2243.4. Costs of Review

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency to cover the costs of services related to the certification. In addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and, lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency, a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food, and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

2243.5. Criteria for Issuance of a Certificate of Approval

To be issued a certificate of approval, an applicant shall demonstrate the following:

2243.5.1. Resources Required to Meet Stated Purposes

The school shall submit a clear and specific statement of purpose regarding the education that it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities

necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

2243.5.2. Stability

(a) Sources of Income. The school shall have a plan for financing each proposed degree or program. The plan shall specify the dollar amounts and proportions of income by source, including:

- (1) Tuition and fees.
- (2) Other school-generated funds.
- (3) Federal or State funds.
- (4) Private funds.

(b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.

(c) Management. The school shall operate under a governing structure that clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

2243.5.3. Disclosure

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission, or transfer of credit. The following information shall be disclosed on the school's website and in a general catalogue, bulletin, or other public information document provided to prospective students prior to enrollment.

- (a) Name and physical address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.
- (f) An accurate list of all educational activities.

- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks, or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.
- (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.
- (m) Requirements for graduation.
- (n) A statement of the certificates or diplomas awarded upon graduation, if any.
- (o) A statement of the degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.
- (p) The system of grading or evaluation.
- (q) The school's policy establishing standards for determining adequate progress.
- (r) The availability and extent of student services such as job placement services, counseling for academic and personal problems, food service facilities, and parking facilities.
- (s) The availability of financial aid.
- (t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, State Veteran's Affairs-approving agency course approval, and State certification.
- (u) The school's policy regarding the refund of tuition and other fees collected in advance of enrollment or class attendance.
- (v) The school's "closing" policy establishing procedures that will be followed in the event that a determination is made to cease operation.

(w) The school's student records policy with provisions regarding access, disclosure, and the cost of copies.

(x) A statement that credits earned at the school are transferable only at the discretion of the receiving school.

2243.5.4. Facilities

The school's facilities shall meet all applicable State, federal and local fire, safety, health, and access standards.

2243.5.5. Student Records

The school shall have adequate procedures for the safe-keeping of student records and for complying with the requirements of 16 V.S.A. § 175.

2243.5.6. Waiver of Requirements for Certification

A school that believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

2243.6. Criteria for Issuance of a Certificate of Degree Granting Authority

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

- (a) Schools desiring to offer post-secondary degrees, including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met.
- (b) Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences.
- (c) Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences.
- (d) Candidates for a degree shall be required to complete a coherent program of study.

2243.7. Certification Limitations

The Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms, or limitations as the Board deems necessary. A school that has been granted either a certificate of approval or a certificate of degree granting authority shall notify the Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The Board may require a school to reapply for certification following program changes that are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

2243.8. Denial, Approval with Stipulations, Revocation, or Suspension of Certification

2243.8.1. Process

Prior to recommending denial, approval with stipulations, revocation, or suspension of certification to the Board, the Secretary shall notify the school in writing of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or the Secretary's designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

2243.8.2. Criteria for Revocation or Suspension

The Board may suspend or revoke certification for good cause, including:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet the terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation.
- (g) Refusal to permit team evaluation or other investigations provided for under these rules.
- (h) Change in accreditation status.

2243.8.3 Investigations.

The Secretary may conduct any investigations of a school that the Secretary deems to be necessary and appropriate in order to ensure compliance with the terms of these rules. A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

2243.8.4. Loss of Recognition for Accreditor

- (a) In the event an accrediting entity is no longer recognized by the U.S. Department of Education, any post-secondary school having received accreditation from such entity shall:
 - (1) Notify the Board in writing within 30 days of receiving notice or information of such loss of recognition.
 - (2) Apply for accreditation with a recognized accreditor at least 90 days before the school's existing accreditation expires.

(b) The post-secondary school may continue to operate under its approval by the Board pending receipt of its new accreditation, but in no case longer than 24 months. The Board may extend this period upon request of a post-secondary school going through the accreditation process.

Section 2250. Preservation of Post-Secondary Institutions' Student Records

Statutory Authority: 16 V.S.A. § 175.

2250.1. General

Institutions of higher education are required to maintain their student academic records in a form prescribed by the Board. The Agency is authorized to ensure that the student academic records are in appropriate form. The institution of higher education is required to inform the Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

2250.2. Maintenance of Academic Records

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

2250.2.1. Monitoring

Upon reasonable notice, every institution shall make available to a representative of the Board its student records for the purpose of ensuring compliance with this rule. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

2250.2.2. Return of Records

A repository may duplicate the records of an institution and then return the original records to the institution.

2250.2.3. Institutions Discontinued Prior to April 25, 1979

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A. § 175. and these rules.

2250.3. Form and Contents of Academic Records

The permanent academic record of each student registered for credit at a post-secondary institution that operates in this State, whether or not such institution is chartered in this State, shall contain at a minimum:

- (a) The identification of the institution.
- (b) The identification of the student.
- (c) The record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress.
- (d) Periods of enrollment covered by subsection (c) above.

(e) The student's status at the close of the last period of enrollment.

(f) The degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

[Section 2260 to 2265 Repealed by Operation of Law.]

Section 2266. Post-Secondary Online or Correspondence Schools

An online or correspondence school that offers post-secondary credits or degrees shall also meet the applicable requirements of 16 V.S.A. §§ 176. and 176a.

Section 2270. Private Kindergarten Approval

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

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 Secretary. An application for approval shall contain the following:

(a) The name and address of the school.

(b) A description of the school's curriculum and methods of instruction.

(c) A description of the school's physical facilities.

(d) A list of the school's staff and their qualifications.

(e) The operating schedule of the school

(f) A statement certifying that the school is in compliance with the Kindergarten Nursery School provisions in the Regulations for Day Care of the Department for Children and Families. (hereinafter "D.C.F. Kindergarten Regulations").

2271.2. Appointment of Reviewer

Upon receipt of an application for approval, the Secretary shall appoint an educator to review the application and visit the school. In addition, the Secretary shall contact D.C.F. to determine on his or her behalf whether the school meets the "D.C.F. 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 the Secretary

The appointed educator shall present a written report including a recommendation regarding approval to the Secretary. The report of the appointed educator shall incorporate the determination of D.C.F. concerning compliance with the "D.C.F. Kindergarten Regulations". A copy of the report and recommendation shall be provided at the same time to the applicant.

2271.5. Secretary's Recommendation

The Secretary shall recommend approval or disapproval for action by the Board at its next regular meeting. Officials of the kindergarten shall be notified of this meeting date.

Section 2272. Criteria for Approval

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

(a) The curriculum embodies a minimum course of study, as defined in 16 V.S.A. § 906., Courses of Study, with learning experiences adapted to a student's age and ability.

(b) The school is in compliance with State requirements pertaining to the health and safety of students 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.)

(c) The director and teachers in the kindergarten are qualified through training or experience in:

(1) Structuring kindergarten learning environments that enhance cognitive and social development.

(2) Teaching skills and concepts in mathematics, language arts, science, the arts, and health that are consistent with principles of child development.

(3) Planning and leading activities that foster social and emotional growth in young children.

(4) Dealing with parents and family of children to ensure home support and to promote learning outside of the school or center.

(5) Identifying developmental delays in young children.

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

(e) The facility and program meet the "D.C.F. Kindergarten Regulations."

Section 2273. Additional Requirements

2273.1. Records

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. Professional Development

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 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. Revocation or Suspension of Approval

Prior to recommending revocation or suspension of approval to the Board, the Secretary 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.

Section 2776. Rule of Construction

This rule shall not be construed to impose obligations on schools that are inconsistent with that school's constitutional or statutory rights. In addition, this rule shall not be construed to restrict any student's constitutional or statutory rights.

Section 2277. Effective Date

Amendments to all Sections shall become effective **July 1, 2024**, except that Subsections 2223.3.3(b)(Instructional Strategies) and 2223.3.3(c)(1) (Curriculum Content) will take effect on July 1, 2025.