

Vermont State Board of Education

**Presentation to the
Senate Education Committee
January 18, 2024**

Phase II Updates to Rule Series 2200

State Board Membership

- **Jennifer Deck Samuelson, Chair** (2020 - 2/28/2026)
 - *Winhall*; Chair, Winhall School Board; Attorney at Law
- **Tammy Kolbe, Vice Chair** (2021 - 2/28/2027)
 - *Warren*; UVM Assoc. Prof. of Educational Leadership and Policy Studies; Principal Researcher at American Institutes for Research
- **Mohamed Diop** (2023 - 2/28/2029)
 - *Bristol*; Director, Multilingual Learner Programs; Winooski School District
- **Grey Fearon** (2023 - 6/30/2025)
 - *Panton*; Student Member; Vergennes Union High School
- **Kim Gleason** (2019 - 2/28/2025)
 - *Grand Isle*; Former Chair, Essex Westford School District (EWSD); former Treasurer, VSBA; Substitute Teacher, EWSD
- **Lyle Jepson** (2021 - 2/28/2027)
 - *Rutland*; Former teacher; former Principal, Fair Haven Union High School; former Director, Stafford Technical Center
- **Tom Lovett** (2021 - 2/28/2027)
 - *Waterford*; Teacher and former Head of School, St. Johnsbury Academy
- **Jenna O'Farrell** (2019 - 2/28/2025)
 - *St. Johnsbury*; Former teacher, Assistant Principal, and Principal, St. Johnsbury School
- **Richard Werner** (2022 - 2/28/2024)
 - *East Dover*; Chair, Windham Central Supervisory Union; Chair, River Valleys School District
- **Aaliyah Wilburn** (2023 - 6/30/2024)
 - *Derby*; Student Member; North Country Union High School
- **Heather Bouchey, Interim Secretary of Education**

State Board of Education
Rule Series 2200 (Independent School Program
Approval) Update Committee

Jennifer Deck Samuelson, Chair

Kim Gleason

Tom Lovett

Rule Series 2200: Authority and Effect

- ❖ 16 V.S.A. §164(14) *requires* the Board to “adopt rules for approval of independent schools”.
- ❖ Rules are adopted pursuant to Vermont’s Administrative Procedure Act, 3 V.S.A. Ch. 25, and have been codified as “Rule Series 2200” (CVR 22-000-004).
- ❖ As duly adopted administrative rules, **Rule Series 2200 has the Power of Law**. Compliance is not discretionary.

Rule Series 2200: Roles

The Board's Role is Limited to:

- ❖ Adopting rules for approval
- ❖ Making findings before approving schools that meet the requirements of Title 16 and the the Board's Rules *upon Recommendation of the Secretary*
- ❖ Conducting quasi-judicial due process hearings to revoke or suspend independent school approval *upon Recommendation of the Secretary*

Rule Series 2200: Roles (continued)

The Secretary or Agency's Roles Include:

- ❖ Developing and Receiving Applications
- ❖ Reviewing and Evaluating Applications
- ❖ Conducting a Site Visit (when necessary or required)
- ❖ Creating a Report, Findings, and Recommendation Regarding Approval for the Board
- ❖ Providing Required Notices and Communicating Information to Schools and other Parties.
- ❖ Receiving Required Reports and Communications from Schools
- ❖ Receiving, Investigating, Resolving (if appropriate), and Reporting Complaints of Noncompliance
- ❖ Placing Schools on Probation

Rule Series 2200: Roles (continued)

The Secretary or Agency's Roles Include:

- ❖ Recommending Revocation or Suspension of Approval to Board
- ❖ Collecting required data and assessment Results
- ❖ Establishing minimum standards for students receiving special education services
- ❖ Providing technical assistance to LEAs and Independent Schools
- ❖ Approving applications from LEAs to place students in Independent Schools not Approved for Public Tuition
- ❖ Determining and publishing maximum rates for tuition, and room and board for residential placements and Therapeutic Schools
- ❖ Determining whether costs for Special Education Services provided by Independent Schools are reasonable
- ❖ Conducting Corrections Education Programs reviews (as Approved Independent Schools)

Rule Series 2200: Summary of 2022 Updates

In 2022, the Board adopted Phase I revisions to Rule Series 2200. Major changes included:

- ❖ Strengthening nondiscrimination requirements (effective May 10, 2022)
- ❖ Incorporating provisions of Act 173 (2018) (effective July 1, 2023)
 - Re-writing Rule 2229 and adopting approval criteria for approved independent schools to receive public funds

Current Nondiscrimination Requirements

Rule 2226.6: All approved independent schools are required to submit documentation of the following as part of their application:

- ❖ A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act and the Vermont Fair Employment Practices Act.
- ❖ An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.
- ❖ A description of physical facilities including plant, materials, and equipment, and assurances that the facilities meet all applicable State and federal requirements.

Current Nondiscrimination Requirements (continued)

Rule 2229.1: In order to be eligible to receive public funds, each approved independent school shall publish, maintain, and follow a written enrollment policy which, at a minimum, provides the following:

- ❖ 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;
- ❖ Students shall be accepted in a nondiscriminatory manner and consistent with the school's written enrollment policy;
- ❖ No student shall be denied acceptance based on disability or because they are eligible or may be eligible for special education; and
- ❖ No student shall be denied accepted for enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or state law.

Current Nondiscrimination Requirements (continued)

Rule 2223.9

- ❖ The Secretary is required to conduct an investigation of reports or complaints related to the approval standards and laws that apply to approved independent schools.
- ❖ At any time, the Secretary may convene a review team to conduct a formal investigation of the report or complaint.
- ❖ The Secretary may resolve the complaint informally, place the school on probation, and/or advance the matter to formal investigation that could result in the Secretary recommending that the Board take action to revoke or suspend approval of the school.
- ❖ The Secretary must maintain a public register of all complaints that result in the imposition of probation or a formal investigation which shall include the general nature of the complaint and the action taken by the Secretary

**** NOTE: ADDITIONAL REQUIREMENT OF ANNUAL ASSURANCE OF CONTINUED COMPLIANCE WITH NONDISCRIMINATION PROVISIONS (DESCRIBED IN SLIDE 16) IS ADDRESSED IN PROPOSED PHASE II UPDATES****

Phase II Updates to Rule Series 2200: Three Categories of Work

- ❖ Applying the principles and goals of Act 1 (2019) to independent schools
- ❖ Creating a requirement that all independent schools, as a condition of their approval, must provide ***annual assurances*** of their compliance with the Rules
- ❖ Introducing a framework that accrediting agencies must follow in order to be recognized by the SBE

Implementing the Goals of Act 1 (2019): Timeline

- Act 1 created a Working Group to review standards for student performance and recommend updates to “recognize fully the history, contributions, and perspectives of ethnic groups and social groups.” The Working Group was also authorized to review State statutes, SBE rules, and school district and supervisory union policies that concern or impact standards for student performance or curriculum used in schools.
- After more than two years of evaluation, the Working Group proposed updates to Rule Series 2000 “Education Quality Standards” (EQS) based on the principles of Act 1 and presented them to the SBE at its April 20, 2022 Meeting.
- Prior to officially commencing the formal APA rulemaking process, the SBE EQS Committee met 28 times to hear testimony, discuss and deliberate possible revisions to EQS Rules.
- Revisions to EQS that embody the goals of Act 1 represent efforts of a diverse group of stakeholders to ensure that the rules are anti-racist, culturally responsive, anti-discriminatory, and inclusive.

Implementing the Goals of Act 1: Authority to Engage in Rulemaking

- The SBE has the authority pursuant to 16 V.S.A. §164(7) to make legally binding rules within the scope of its authority in order to assist in the interpretation, implementation, and enforcement of the education statutes within the limitations of legislative intent.
<https://education.vermont.gov/state-board-councils/state-board/rulemaking>
 - 16 V.S.A. §165 provides statutory authority to the SBE to adopt EQS, which are located in Rule Series 2000
 - Pursuant to 16 V.S.A. §165(f), EQS only applies to independent schools if they seek designation as an “independent school meeting education quality standards”
 - Act 1 does not change this.
 - 16 V.S.A. §164(14) provides statutory authority to the SBE to adopt rules for approval of independent schools, which are located in Rule Series 2200.
- **At its monthly meeting on May 17, 2023, the SBE decided that, although it agreed that the principles and goals of Act 1 should be applied to approved independent schools, the EQS rule series was not the legal vehicle to do this.**
- **The Board opted instead to apply the principles and goals of Act 1 to independent schools by reopening Rule Series 2200.**

Implementing the Goals of Act 1: “Lift and Shift” from EQS to 2200

- EQS Committee identified five instances of change in Proposed Rule Series 2000 that reflected the principles of Act 1 and should apply to independent schools: 2113 (Nondiscrimination), 2114 (Definitions), 2120.1 (Instructional Strategies), 2120.5 (Curriculum Content), and 2122.1 (School Facilities and the Learning Environment)
- 2200 Committee imported this language into proposed updates to Rule Series 2200 and also incorporated parallel language from the EQS Statement of Purpose (2110).
- SBE counsel also created a Side-by-Side so that it is easy to identify where EQS language has been incorporated into Rule Series 2200 and understand where and why any changes to the language have been made

Annual Compliance Assurance Form (Proposed Section 2223.4)

- Adds additional Compliance Checkpoint to the current Rule Series
- Reflects interest expressed by General Assembly
- Language developed in consultation with the Agency of Education
- Gives authority to the Secretary, in consultation with the Board, to prepare the form and make it available to schools
- Sets January 15th of each year as the deadline by which approved schools must provide assurances of their continued compliance
- Form includes assurances that school meets requirements of 2223.2 (Nondiscrimination) and, if applicable, 2229.4 (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Schools)
- Incomplete or modified forms will not be accepted by the Agency as meeting the requirement.
- Noncompliance triggers formal process (investigation and due process hearing) that can result in suspension/ revocation of approval.

New Procedure by which to Recognize Accrediting Organizations (Proposed Rule 2227)

- Former Rule Series 7000
 - Outdated List
 - Board opened Rule Series 7000 in 2021
 - SBE represented to LCAR and members of the public that it would create a new framework by which it would recognize accrediting agencies and include this in Rule Series 2200
 - **Rule Series 7000 sunsets July 1, 2024.**
- Several options considered by 2200 Committee
- Proposed language was developed in consultation with the New England Association of Schools and Colleges (NEASC), Association of Independent Schools in New England (AISNE), and International Council Advancing Independent School Accreditation (ICAISA)

Summary of Framework by which to Recognize Accrediting Organizations (Section 2227)

- New framework includes 11 criteria with which interested accrediting organizations must comply
- Accreditation leads to streamlined approval process in Section 2224
- Accreditation does not change Secretary's obligation to review a school's compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), 2223.3.5 (Other Required Activities), relevant state law, and, if applicable, its submission of a complete, unmodified annual assurance attestation form described in 2223.4. This obligation exists whether the school is accredited or not.

Other Changes

- Introduction of term “approved school” which is defined to include both approved independent schools and approved independent schools that are ineligible to receive public funds
 - Reorganization of Rule Series to be more user-friendly
 - Changed duties of Secretary to duties of the Agency
 - Cleaning up language to provide stylistic consistency
 - Adding in reference to other requirements for approved schools that are already set forth in statute
- No substantive changes to last round of updates to the Rule Series since these just went through the formal APA rulemaking process last year