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*State Board of Education*

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**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**  
2210 (vacant)

**INDEPENDENT SCHOOL PROGRAM APPROVAL**

2220 Approval of Independent Elementary and Secondary Schools

Statement of Purpose

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

2221 Statutory Authority: 16 VSA §166 and 16 VSA §2958(e)

2222 Procedure

Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Commissioner of Education. Independent schools which are recognized as provided for in 16 VSA §165a rather than approved are not required to comply with the procedures set forth in this section. An application shall meet the requirements of 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.

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 school's 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 by the department to the appropriate public agency.

## 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.

## 2224 Tuition from Public Funds

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 student who has been determined eligible for special education unless:

- (a) the school is approved for special education purposes pursuant to Rule 2228 et seq.; or
- (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 accrediting agency recognized by the state board. 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.

## 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 VSA §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 professional 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 VSA §166 (b) (3).

## 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 sciences, 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 of 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 pupils and meets the requirements of law regarding the reporting 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 purpose for the period of approval.

#### 2227 Length of Approval

The board may grant initial approval for a period of not more than two years, and renewal of approval for not more than five years.

#### 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 VSA §2958 (e), it must 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 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.

2228.2 (1) Placement Prohibition



No responsible agency, as defined by Rule 2360.2 shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

- (a) a subsection (2) of this rule,
- (b) a court order, or
- (c) a due process order pursuant to Rule 2364.3.5.

Nor shall such placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education.

(2) Exceptional Circumstances – Approval Process

Upon application by a responsible agency, 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, Rule 2366.2.2(7) notwithstanding, 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 VSA §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 students with the category of disability under which the student was determined to be eligible for special education; and
  - (ii) the proposed placement is deemed appropriate by the student'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-student 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 students 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 student by:

- (1) maintaining educational records and disclosing them to the sending responsible agency and the student'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 student'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 student 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 student's attendance. For students 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 VSA §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 student'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 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 commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the student.

#### 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 student, as required by 16 VSA §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 students. 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 students, 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.

#### 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.

#### 2230 Approval of Tutorial Programs: Statutory Authority 16 VSA §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 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. The average length of stay for students 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 students 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 must be approved prior to receiving tuition payments from a public school district.

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 must 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 student, and are coordinated with the student's responsible school district 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 students.

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 school district.

- 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 must be sufficient to ensure that the instructional services address the individual needs of a student with disabilities and are consistent with the student'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 school district, including credit for coursework for high school and coordinates with other responsible agencies such as Social and Rehabilitative Services, Community Mental Health Centers, and Family-Parent Child Centers by:
- 2230.3.10.1 Contacting the responsible school district(s) (see 16 VSA §1075) in order to access school records and determine the special education status of the student;
  - 2230.3.10.2 Reviewing the IEP, the student'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 school district, if when receiving a student, he/she is suspected of having a disability;
  - 2230.3.10.4 Maintaining educational records and disclosing them to the responsible school district and the student'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 school district regarding the need for a change in a student'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.