

# Vermont State Board of Education

## Rule Series 2200 – Independent School Program Approval

CVR 22 000 004

FINAL RULE FOR BOARD VOTE 4/17/2024

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#### Rule 2200. Independent School Program Approval

##### Section 2220. Statement of Purpose

The purpose of independent school approval rules is to assure effective, accessible, and equitable educational opportunities that are anti-racist, culturally responsive, anti-discriminatory, and inclusive for students enrolled in Vermont's approved independent schools in accordance with state and federal law and aligned with the purposes set forth in Act 173 of 2018 and Act 1 of 2019.

These rules are organized to provide clarity to independent schools regarding requirements for initial and continued approval to operate and, if applicable, to receive public funds. Accrediting agencies that satisfy the standards set forth herein in Section 2227 (Recognized Accrediting Agencies) will be recognized and the schools they accredit will enjoy an accelerated approval process. Ongoing compliance with state and federal laws and regulations is expected through an annual compliance assurance.

These rules prohibit, to the fullest extent allowed by law, discrimination against any student pursuing an education or participating in the general life or activities of a school because of or based on any actual or perceived protected class consistent with state and federal law. No student shall be unlawfully excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any educational program or activity as the result of, or based upon, 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.

In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), discriminating against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, housing status, or non-citizenship or immigration status, is contrary to the Board's intent that all students experience an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive learning environment.

These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:

- (a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 and in this Statement of Purpose;
- (b) why all persons should have equitable access to social and economic opportunity;

(c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and other forms of unfair treatment; and

(d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency or State Board. Nothing herein shall create a private right of action.

### **Section 2221. Statutory Authority**

16 V.S.A. §§ 164(14), 166, 2958(e), 2959 and 2973; 2018 Act No. 173; 2019 Act No. 1.

### **Section 2222. Definitions**

“Agency” means the Vermont Agency of Education.

“Anti-discriminatory” practices are actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter discrimination, and that promote a fair, just and equitable learning environment for all students.

“Anti-racist” practices are actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, or community members involved in the daily operations of schools that are necessary to counter racism and that promote a racially inclusive learning environment for all students.

“Approved Independent School” means any approved independent school that meets the requirements of Sections 2223 (Requirements to Operate as an Approved Independent School) and 2224 (Application and Reapplication for Approval; Approval Process) of these rules. An approved independent school is not eligible for public tuition unless it meets the requirements of Sec 2229 (Approval to Receive Public Tuition; Special Education Approval) and Section 2231 (Written Agreements Required).

“Board” or “State Board” or “SBE” means the Vermont State Board of Education.

“Caste” refers to a hierarchical social system of exclusion and dehumanization based on notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.

“Civic and Community Engagement” refers to individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.

“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.

“Culturally and Linguistically Diverse Students” are those who are members of home, cultural, or social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.

“Culture” refers to a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.

“Discrimination” refers to any exclusion, restriction, or preference based on any protected class as identified in federal or state law. Discrimination may be practiced by individuals and groups and may also be expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

“Equity” or “Equitable,” as referenced in these rules in relation to schools or educational programs, results in each student receiving the resources and educational opportunities to learn and thrive in all aspects of learning, school life, career technical education, and community-school interactions, and to discover and cultivate their talents and interests. To be achieved, equity requires an inclusive school environment and may necessitate an unequal distribution of resources and services based on the needs of each student.

“Ethnicity” embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics, and may reflect a legally protected class of people in some contexts

“Inclusion” or “Inclusive practices, as used in this rule, refers to school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential.

“Independent School Approved for Public Tuition” means an independent school that meets the requirements in Sections 2223 (Requirements to Operate as an Approved Independent School) and 2224 (Application and Reapplication for Approval; Approval Process), as well as the requirements in Section 2229 (Approval to Receive Public Tuition; Special Education Approval) and Section 2231 (Written Agreements Required).

“Individualized Education Program” or “(IEP)” means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Section 2363.

“Language” refers to systems of conventional and unconventional spoken, visual-manual, technological, and written symbols that human beings use personally and as members of social and cultural groups to express themselves, shape identity, acquire knowledge, mediate power, play, create, imagine, build and sustain familial, social, and cultural bonds, and express a wide range of personal needs, aspirations, and emotions.

“Linguistic diversity” refers to the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students experience and academic success; eradicating bias, racism, and discrimination; and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.

“Local Education Agency (LEA)” as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.

“Needs-based professional learning” refers to staff learning based upon needs identified through an examination of student performance and organizational and instructional data and that is aligned with the school's curriculum, and pedagogical practices.

“Neurodiversity” refers to the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include, but are not limited to, autism, attention deficit hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.

“Race” embodies any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color, and may reflect a legally protected class of people in some contexts.

“Racism” embodies the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or that advances the claim that racial, ethnic, or cultural groups are inherently superior or inferior, thus explicitly arguing or implying that some groups are entitled to dominate, exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.

“Recognized Independent School” means an independent school that meets the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.

“Restorative Practices” refer to whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. They encourage members of the school community to be constantly present, attending to needs as they arise. They exercise the ability to be dynamic rather than static in a given response. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerabilities. Neither restorative approaches, practices, processes, nor programs shall remove or lessen to any degree a school's responsibility under Vermont law and policy to investigate, call out, name, and discipline behaviors that violate the Agency's “Policy on the Prevention of Harassment, Hazing and Bullying” (HHB) and Federal Title IX.

“Secretary” means the Secretary of the Vermont Agency of Education or their designee.

“Special Education Fees” means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

“Special Education Services” means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education.

“Specially designed instruction” means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability to ensure access by the student to the general curriculum so that the student can meet the educational standards within the state that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in Subsection 2360.2.12.

“Student who requires additional support” means a student who meets the criteria defined in 16 V.S.A. § 2942(8).

“Therapeutic Approved Independent School” or “Therapeutic Independent School” or “Therapeutic School” means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services, at a rate approved by the Agency of Education.

“Tuition” means funds paid by a school district to an approved independent school for general education in accordance with Section 2228.

### **Section 2223. Requirements to Operate as an Approved Independent School**

Every person or entity desiring to operate an elementary or secondary school as an approved independent school shall apply in writing to the Secretary and meet the requirements of law and Sections 2223 (Requirements to Operate as an Approved Independent School) and 2224 (Application and Reapplication for Approval; Approval Process) of these rules. Approved independent schools shall be permitted to operate, in accordance with these rules, for a term of five years or less, as set by the Board, and may submit a new application for approval (reapproval) prior to the expiration of each term. The Board may revoke, suspend, or impose conditions upon an approved independent school according to process set forth in these rules. An approved independent school is not eligible to receive public tuition unless it also meets the requirements of Section 2229 (Approval to Receive Public Tuition; Special Education Approval) and Section 2231 (Written Agreements Required).

#### **2223.1. General Requirements for Approved Schools**

All approved independent schools must comply with statutory requirements and the Board’s rules for approved independent schools and must provide a minimum course of study pursuant to 16 V.S.A. §906. An approved independent school must have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with state and federal laws and regulation.

#### **2223.2. Nondiscrimination Requirement for Approved Independent Schools**

No student shall be unlawfully excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, 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.

##### **2223.2.1. Nondiscrimination Statement and Policy**

(a) Statement. Each approved independent school shall, to the fullest extent consistent with its constitutional and statutory rights, maintain a statement of nondiscrimination that complies with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6. The school shall abide by its nondiscrimination statement in all aspects of its recruitment, enrollment, operation, and employment activities

(b) Policy. Each approved independent school shall maintain, follow, and distribute to students and families of enrolled or prospective students, or the student's education support team, policies that implement the school's nondiscrimination statement.

### **2223.3. Specific Requirements for Approved Independent Schools**

Each approved independent school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, free from harassment, hazing, and bullying. Educational opportunities shall, consistent with state and federal law, be provided in an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive manner, based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

#### **2223.3.1. Physical Facilities**

Each approved independent school must ensure that its physical facilities, including plant, materials, and equipment, meet all applicable state and federal requirements pertaining to the health, safety, and privacy of students.

(a) Each residential school must arrange, on an annual basis, a fire safety inspection performed by the Department of Public Safety or its designee. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection, and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

(b) Each approved independent school must have classroom, laboratory, library, and other facilities necessary to operate its program.

#### **2223.3.2. Financial Capacity, Solvency, and Stability**

An approved independent school must maintain the financial capacity to meet its stated objective during the period of its approved status and must adhere to all applicable financial reporting requirements. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

(a) Each approved independent school must file federal and state tax returns when due, unless an extension is granted; meet payroll and state and federal payroll tax obligations as they are due; maintain required retirement contributions; ensure that designated funds are not used for nondesignated purposes; fully comply with the financial terms of its secured installment debt obligations; and not become insolvent as defined by 9 V.S.A. §2286(a).

(b) An approved independent school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:

1. the school's failure to file its federal or state tax returns when due, taking into account permissible extensions of time;
2. the school's failure to meet its payroll obligations as they are due or pay federal or state payroll tax obligations when due;
3. the school's failure to maintain required retirement contributions;
4. the school's use of designated funds for nondesignated purposes;
5. the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;
6. the withdrawal or conditioning of the school's accreditation on financial grounds by a private, state, or regional agency recognized by the Board for accrediting purposes; or
7. the school's insolvency as defined in 9 V.S.A. §2286(a).

(c) Approved independent schools are encouraged to employ generally accepted accounting principles (GAAP).

### **2223.3.3. Instruction, Faculty, and Special Services**

To demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906, an approved independent school must maintain a written description of its curriculum, methods of instruction, evaluation procedures, and the special services that it has designed to achieve its educational objectives.

#### (a) Professional Staff.

1. The school must employ a sufficient number of professional staff for the population served who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. 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; and
  - B. for all professional staff, relevant experience and/or training in other programs which may or may not be directly related to teaching or the administrative duties to which they are assigned.
2. The school must have an adequate program of continuing professional staff development, including needs-based professional learning. The school shall keep a general description of its staff meetings, develop and maintain expectations for professional growth of staff, and information describing the school's in-service training, financial, and other support given to staff for professional development.
3. Job descriptions for every position that describe training, experience, and degrees required for the position shall be maintained. The school shall also maintain a file with a resume, vita, or

description of appropriate qualification for each current staff member, along with their current assignment, length of service, and description of duties not related to teaching or administration.

(b) Instructional Strategies. Practices employed by educators shall include examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives, including those from the students' lived experiences, into a coherent understanding or analysis. Educators shall be supported in:

1. examining their own identities and biases;
2. Fostering a learning environment that recognizes multiple ethnic, cultural, and racial perspectives; presents and critiques historical counter-narratives; and encourages students to examine issues and expressions of social equity within and beyond the classroom or school;
3. modeling and setting high expectations for all students, regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities, and promoting respect for student differences;
4. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;
5. communicating in culturally and linguistically responsive ways;
6. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;
7. using educational and assistive technology to reduce barriers to learning and heighten student engagement;
8. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;
9. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;
10. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;
11. employing the use of data to adapt pedagogy to unique student needs and incorporating student feedback into instructional design and curricula;
12. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;



13. designing learning experiences that improve students' wellbeing, including opportunities for physical movement in the classroom; and

14. fostering a positive classroom culture using restorative practices where appropriate.

(c) Curriculum Content Areas.

1. All approved independent schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and that allow them to demonstrate proficiency in the curriculum delivered. The course of study offered shall be age and ability appropriate and adequate to meet the educational purposes of the school.
2. Knowledge of diverse cultures, languages, and perspectives shall be incorporated into learning activities and curriculum design, including connecting students' life experiences and ways of learning, to help students to access rigorous curriculum and to develop higher order thinking skills. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive, and accessible to students and families, and shall include ethnic and social equity studies, as described in Act 1 (2019); which promotes critical thinking regarding the history, contribution, and perspectives of ethnic groups and social groups.

(d) Special Services. Approved independent schools shall maintain special services necessary to meet the requirements of a minimum course of study and their educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed. All students shall have access to education materials, which may include digital, multi-media, alternate format and/or print materials sufficient and appropriate to support their learning needs.

**2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities**

Approved independent schools are expected to provide for the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in their understanding and implementation of recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum, each approved independent school shall develop and maintain the following:

(a) a comprehensive plan for responding to student discipline and misbehavior as required by 16 V.S.A. §1161a, that is clear and consistently enforced and includes consequences for violations of policy;

(b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;

(c) practices that comply with the requirements of 16 V.S.A. §§253 - 255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

(d) procedures that do not permit any person listed on the State of Vermont, Department of Public Safety, Vermont Crime Information Center Sex Offender Registry to work at the school as an employee, volunteer, or work study student pursuant to 16 V.S.A §260;

- (e) practices that ensure that adults employed in the school receive orientation, information, and instruction on the prevention, identification, and reporting of child sexual abuse (as defined in 33 V.S.A. §4912(8)) and sexual violence, and that also offer opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);
- (f) opportunities that provide access for eligible students to participate in dual enrollment pursuant to 16 V.S.A. § 944, including accepting credit duly awarded, collecting enrollment data, and providing support to participating students during the program and as they transition to postsecondary enrollment;
- (g) a procedure for providing the names and addresses of publicly funded students enrolled at the approved school to the school's regional career technical education (CTE) center and complying with any other requirement in Title 16 or Rule 2370, et. seq. related to career technical education;
- (h) an enrollment policy designed to serve children with disabilities;
- (i) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and includes appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;
- (j) practices that ensure compliance with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;
- (k) a policy pursuant to 16 V.S.A. §912 regarding a student's right to be excused any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;
- (l) procedures to ensure that students have access to menstrual products at no cost pursuant to 16 V.S.A. §1432;
- (m) practices that ensure compliance with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;
- (n) practices that permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;
- (o) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;
- (p) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;
- (q) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;
- (r) practices that promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;
- (s) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and

(t) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.

### **2223.3.5 Other Required Activities**

In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved independent school shall perform the duties listed in (a) – (k) below.

For the purposes of subdivision (j) of this Subsection 2223.3.5 (Other Required Activities), a transcript is a formal record certifying and documenting a student's or former student's academic achievement and shall include, at a minimum, the student's name, date of birth, last known address, dates of attendance, courses taken, grades or proficiencies achieved, credits or credentials awarded, and standardized test scores, if applicable. An academic record includes a student's transcript and may also include alternate graduation plans, an Individualized Education Program, a 504 Plan, personalized learning plan, rank in class, awards, activities, clubs, and other information not included in a student's transcript. The academic record shall not include documents notes, records, or descriptions of a student's disciplinary history. Academic records are not the same as education records, as referenced in FERPA.

- (a) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. §2005;
- (b) maintain a register of the daily attendance of each of its enrolled students;
- (c) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;
- (d) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;
- (e) comply with legal requirements of 16 V.S.A. §568 concerning nondiscriminatory school branding;
- (f) measure attainment of standards for student performance for publicly funded students, as required by 16 V.S.A. 164(9), and provide data related to the assessments to the Secretary as required by 16 V.S.A. §166(g); schools are encouraged to also provide the data to local education agencies;
- (g) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);
- (h) comply with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;
- (i) conduct exercises commemorating the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;
- (j) adopt policies related to record maintenance and retention that, at minimum,

1. provide for the secure collection, maintenance, disclosure, transfer, and destruction of academic records;
2. ensure that records are kept physically and electronically secure and enable accurate and timely reporting in connection with data collection requirements in alignment with the Agency's data collection efforts;
3. ensure the accuracy, relevancy and confidentiality of such records, and accessibility thereto, in compliance with the federal Family Educational Rights and Privacy Act (FERPA), if applicable;
4. permanently maintain transcripts of students who have graduated or withdrawn if the school operates grades nine through twelve;
5. provide a method by which the academic record of any former student is promptly and securely transferred to a subsequent school in which the student enrolls, upon request of the student or their legal guardian and without placing any condition on the release of such record; and
6. provide for the timely and confidential disposition of student records in the event of the school's closure; and

(k) comply with other applicable state and federal requirements pertaining to approved schools.

#### **2223.3.6. Independent Schools Operating a Boarding Program**

To be approved under these rules, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by an agency recognized by the Board pursuant to Section 2227 (Recognized Accrediting Agencies) or shall be licensed as a residential childcare facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

#### **2223.4. Annual Compliance Assurance**

(a) On or before February 15th of each year, each approved independent school shall assure that it continues to comply with applicable requirements of these rules and state and federal law.

(b) In consultation with the Board, the Agency shall prepare and make available a simplified electronic form to be used to meet the requirement of this section that shall be made available to all approved independent schools by direct email and posting on the Agency website by no later than January 15<sup>th</sup> of each year and at least 30 days before the date it is due. The form shall include the school's specific assurance that to the full extent consistent with the school's statutory and constitutional rights it meets the requirements of Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools) and, for schools approved to receive public tuition, complies with Section 2229 (Approval to Receive Public Tuition; Special Education Approval) and Section 2231 (Written Agreements Required).

(c) The form shall also require disclosure of any complaint alleging a violation of a nondiscrimination provision of law or these rules, and the status of each complaint. The Agency, upon review, shall certify to the Board that either there were no complaints or that any pending complaint is under review by an

appropriate authority. The Agency shall refer any outstanding complaints to the appropriate authority pursuant to Subsection 2226.2.1 (Complaints; Reports), below.

(d) In the event that there are circumstances that are unforeseen or beyond the school's control that prevent submission of the form by the announced due date, schools may request, and the Secretary may grant, approval to submit the form on an alternate date. The request must be submitted prior to the announced due date unless the Secretary, finds that that delivery of the form pursuant to (b) above was ineffective.

(e) If an approved independent school fails to submit its form by the date set by the Agency, the Secretary shall promptly contact the school by phone or first class mail regarding its deficiency and notify the Board that the school is out of compliance with subsection (a) above. After providing an opportunity for a hearing, the Board may revoke, suspend, or impose conditions on the school's approval status, including its ability to receive public tuition, if it determines that the school has failed to comply with the requirements of this Section.

(f) By January 15, 2025, the Agency shall develop and publish the electronic forms required to comply with this Section. The Agency shall also deliver at least one online training and written guidance, that shall be made available to approved independent schools, to assist in complying with this requirement. All approved independent schools shall be notified of the annual compliance assurance requirement and the submission deadlines by individual email and public notice posted on the Agency website.

#### **2223.5. Confidential Information**

Information provided by a school under these rules that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166(b)(8).

#### **Section 2224. Application and Reapplication for Approval; Approval Process**

Approval shall be recommended for an independent school offering elementary or secondary education if it provides a minimum course of study pursuant to 16 V.S.A. § 906, substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, and fully complies with the nondiscrimination provisions of Section 2223.2 (Nondiscrimination Requirement for Approved Schools), Sections 2223.1 (General Requirements for Approved Schools), 2223.2.1 (Nondiscrimination Statement and Policy), and 2223.4 (Annual Compliance Assurance), A school meeting the requirements of Section 2223 (Requirements to Operate as an Approved Independent School) and this Section, but not Section 2229 (Approval to Receive Public Tuition; Special Education Approval) and Section 2231 (Written Agreements Required), may be recommended for approval but may not receive public tuition.

#### **2224.1. Standard Application Process**

All independent schools that are not accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall follow the standard application process set forth below.

#### **2224.1.1. Standard Application**

An independent school seeking approval under these rules shall apply to the Secretary using a form prepared by the Secretary to meet the requirements of this section. At a minimum, the application shall solicit the information containing or describing the school's basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies,

fiscal practices and evidence of financial capacity, operational information, assurances and disclosures required under these rules, a request to receive public tuition, if applicable, and other information required under these rules that the Secretary, Board, or review committee may need to determine whether the school meets the requirements for approval. The school shall also submit a compliance assurance form described in Subsection 2223.4 (Annual Compliance Assurance).

#### **2224.1.2. Standard Application Review, Visit, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall appoint a review committee of at least two persons. The review committee shall review the application materials and visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities. The review committee shall examine the application materials and consider findings from its site visit and submit a report, including a written initial recommendation regarding approval, to the Secretary, with a copy sent to the applicant school. The applicant shall be given thirty days to respond before the Secretary makes a final recommendation regarding approval to the Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

#### **2224.2. Accredited Independent School Application Process**

In the case of an independent school seeking approval that has been accredited within the last five years by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agency), an abbreviated application and review process described in this subsection may be used.

##### **2224.2.1. Accredited Independent School Application**

An independent school seeking approval under this subsection shall apply to the Secretary using a form prepared by the Secretary. The application shall require the school to provide evidence of accreditation from the recognized accrediting agency, basic information about the school, assurances of compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Other Required Activities) and state law, and a request to receive public tuition pursuant to Section 2229 (Approval to receive Public Tuition; Special Education Approval), if applicable. The school shall also submit a compliance assurance form described in Subsection 2223.4 (Annual Compliance Assurance).

##### **2224.2.2. Accredited Independent School Application Review, Report, and Recommendation**

Upon receipt of a complete application, the Agency shall review the application materials and submit a report including a written initial recommendation regarding approval, to the applicant school. The applicant school shall be given thirty days to respond before the Secretary makes a final recommendation regarding approval to the Board. A comprehensive review of programs and operations by a review committee, including a site visit, will not be required.

##### **2224.3. Review**

The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination and timely review of applications and reapplications for school approval to promote efficiency in scheduling and expediency in decision-making.

##### **2224.4. Board Approval**

The Board shall review each application for approval and consider the report and recommendation of the Secretary. The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval in the exercise of its judgment.

(a) The Board shall make the following findings prior to approving any school that submitted a standard application:

1. The description of the school in the approval application is accurate;
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;
3. The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, accessible digital, multi-media, and alternate format resources, and a system of records by which student progress may be assessed;
4. The school has classroom, laboratory, library, and other facilities necessary to operate its program;
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:
  - A. 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.
  - B. For all professional staff, relevant experience and/or training which may or may not be directly related to teaching or the administrative duties to which they are assigned;
6. The school has an adequate program of continuing professional staff development as demonstrated in the application;
7. The school employs a sufficient number of professional staff for the population served;
8. The school substantially complies with all statutory requirements and the Board's rules for approved independent schools and fully complies with Sections 2223.1 (General Requirements for Approved Schools), 2223.2.1 (Nondiscrimination Statement and Policy), and 2223.4 (Annual Compliance Assurance), as well as all operations and requirements related to student safety, including those relative to its facilities, fire drills, and the immunization of its students against disease;
9. The school maintains a register of the daily attendance of each of its enrolled students;
10. The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;
11. The school has the financial capacity to carry out its stated objectives for the period of approval as evidenced by one of the following:
  - (A) an audit letter by a certified accounting firm from the present or prior fiscal year describing the school's financial capacity;

(B) a notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body of the school;

(C) an audit from the present or prior fiscal year performed by a certified accounting firm; or

(D) a statement of the school's financial capacity submitted by a private, state, or regional agency recognized by the Board accrediting purposes concerning the school's financial capacity;

12. The school complies with the requirements of 16 V.S.A. § 255 et seq. relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

13. The school complies with legal requirements concerning nondiscriminatory school branding;

14. The school has adopted a policy on record maintenance and retention that meets the requirements of these rules;

15. the school promotes an equitable, just, and inclusive community of adults and students, fosters a culture of learning, and inspires students to respect and value diversity in its many forms;

16. The school, with its application, has assured its compliance with Vermont-specific laws and regulations by submitting a compliance assurance form pursuant to 2223.4. (Annual Compliance Assurance); and

17. If the school seeks approval to receive public tuition and provide special education pursuant to Section 2229 (Approval to Receive Public Tuition; Special Education Approval), that it complies fully with the requirements of that Section and Section 2231 (Written Agreements Required), including a specific finding that the school's description of its enrollment policy sufficiently states and describes how it is designed to serve children with disabilities.

(b) The Board shall make the following findings prior to approving any school that submitted an accredited independent school application:

1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;

2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and

3. The school, with its application, has assured its compliance with Vermont-specific laws and regulations, including nondiscrimination provisions of these rules, by submitting a compliance assurance form pursuant to 2223.4 (Annual Compliance Assurance); and

4. If the school seeks approval to receive public tuition and provide special education pursuant to Section 2229.6 (Approval to Receive Public Tuition; Special Education Approval), that it



complies fully with the requirements of that Section and Section 2231 (Written Agreements Required), including a specific finding that the school's description of its enrollment policy sufficiently states and describes how it is designed to serve children with disabilities.

(c) Prior to approving a school's application to receive public tuition pursuant to Subsection 2229.6 Approval to Receive Public Tuition; Special Education Approval), the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.

(d) The Agency shall maintain a public register of all recognized and approved independent schools and distinguish whether an approved independent school is currently eligible or ineligible to receive public tuition.

#### **2224.5. Continued Approval**

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

#### **2224.6. Continued Accreditation**

A school accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall notify the Agency within five days of any change to its accreditation status.

#### **2224.7. Reapplication**

The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The Secretary may extend the reapplication period for good cause. Upon receipt of a complete application for reapproval, the Agency shall conduct its review, issue its report, and the Secretary shall make their recommendation to the Board in a timely manner.

#### **2224.8. Interim Compliance Report from Accrediting Agency**

For any school accredited by a recognized accredited agency under Section 2227 (Recognized Accrediting Agencies) seeking reapplication under 2224.7 (Reapplication) whose accreditation period exceeds the school's approval period, a supplemental interim report from the accrediting agency must be submitted during the last year of the school's approval by the Board and must provide information necessary to assure the Board that the school meets the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the application process described in Subsection 2224.1.1 (Standard Application) in seeking continued approval.

#### **Section 2225. Length of Approval**

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

#### **Section 2226. Termination; Procedures for Revoking or Suspending Approval**

##### **2226.1. Termination**

Approval of an independent school that fails to complete a timely application for reapproval shall terminate on the date specified in the most recent approval action, provided that the school received notification of the expiration of the approval period required in Section 2224.7 (Reapplication).

## **2226.2. Complaints; Investigations; Due Process Hearings**

### **2226.2.1. Complaints; Reports**

(a) Complaints against an approved independent school must be made in writing to the Secretary. The complaint must contain enough detail to show that the school substantially failed to comply with the minimum course of study required, failed to maintain resources required to meet its stated objectives, or failed to comply with statutory requirements or the Board's rules for approved schools.

(b) 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 for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency. Complaints or reports related to violation of nondiscrimination laws shall be referred to the appropriate state or federal agency.

(c) For any complaint or report referred under this subsection, the Secretary shall request that the relevant agency submit a report of its findings and any actions resulting from the referral at the conclusion of the agency's investigation.

### **2226.2.2. Investigations; Due Process Hearing**

(a) The Secretary shall conduct a prompt initial investigation of reports or complaints related to the requirements of this rule and laws that apply to approved independent schools, except for those first referred to other state agencies pursuant to Subsection 2226.2.1(b) (Complaints; Reports). Such investigations shall proceed as follows:

1. The school shall receive notification of the complaint and investigation unless contraindicated by the particular facts. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school.
2. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved school on probation and notify the Board of this action. An approved school may appeal the imposition of probation to the Board by requesting a hearing as provided in Subsection 2226.3 (Revocation or Suspension of Approval).
3. At any time, the Secretary may conduct a formal investigation without first attempting an informal resolution or imposing probation.
4. If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons that, with the consent of the school, shall include a member of the Council of Independent Schools. The team shall conduct a school visit and shall obtain from the school such information or documentation necessary to perform its assessment. The review team will inform the Secretary and the school of the results of its visit and assessment. The Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed

resolution and issue a written opinion that shall include minority opinions, if applicable, on the same.

(b) If, after receiving the Council's opinion or a state or federal agency's report pursuant to 2226.2.1(b) (Complaints; Reports) above, the Secretary determines that revocation or suspension of approval is warranted pursuant to 2226.3, the Secretary shall notify the Board of the recommendation and provide notice to the school. The Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

(c) If the Secretary reasonably believes that an approved school lacks the financial capacity to meet its stated objectives during the period of its approved status, including by means of self-report of any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability), the Secretary shall so notify the school in writing and shall provide the school a reasonable opportunity to respond. If the Secretary does not find that the school has satisfactorily responded or demonstrated its financial capacity, a formal investigation may be initiated in accordance with (d) above, pursuant to 16 V.S.A. §166(b)(8).

(d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which are or shall be made a public record consistent with the provisions of 1 VSA §317, and which shall include the general nature of the complaint and action taken by the Secretary or Board.

### **2226.3. Revocation or Suspension of Approval**

(a) After investigation and providing an opportunity for hearing pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearing) the Board may revoke, suspend, or impose conditions on the status of an approved school, including its eligibility to receive public tuition if it determines that the school has :

1. failed to demonstrate that the school has the resources required to meet its stated objectives;
2. failed to comply with a statutory requirement or the Board's rules for approved schools, including failure to submit an annual compliance assurance;
3. failed to report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability); or
4. failed to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).

In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions to take, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(b) If a court of competent jurisdiction, or a state or federal agency, determine after investigation that there are reasonable grounds to believe a school has discriminated against a student or employee in violation of federal or state law, the Board may hold a due process hearing to determine if the school's conduct objectively and substantially undermined or detracted from or interfered with a student's

educational performance or access to school resources. If the Board makes such a finding, it may revoke, suspend, or impose conditions on the status of the school, including its ability to receive public tuition. The Board shall consider the status of the underlying case with the court or state or federal agency, when deciding whether it would be appropriate to conduct a hearing or to act upon its findings.

**Section 2227. Recognized Accrediting Agencies**

(a) The Board shall recognize accrediting agencies that meet the following requirements:

1. operate continuously for at least five years prior to applying for recognition under this section;
2. maintain membership in a peer organization that supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation;
3. use a peer review process that includes evaluation by leaders of similar school;
4. appropriately train all staff and peer reviewers who are involved in the accreditation process;
5. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development, admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable);
6. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session;
7. require that schools seeking accreditation to maintain a curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress;
8. require that schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;
9. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools that it accredits and provide interim reports during the accredited school's approval period that are sufficient to meet the informational needs of the Board;
10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved independent schools in Vermont; and
11. agree to review and share with the Agency of Education evidence of practices and compliance with state-specific requirements during the initial or interim stages of an approved independent school's accreditation period.

(b) Any accrediting agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Each applicant shall also provide its methodology for assessing and supporting schools in meeting and advancing

diversity, equity, inclusion, and other nondiscriminatory practices. Upon review of each submission, the Board shall determine whether it will recognize the accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicants shall be notified of a decision and any conditions of continued recognition in writing.

(c) The Board shall create, and the Agency of Education shall maintain a publicly available list of currently recognized accrediting agencies that meet the criteria described in subsection (a) above. The Board may 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 criteria 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, public tuition may be paid 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 (Written Agreements Required), 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 Independent Schools Approved for Public Tuition, 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 (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), 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 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) Agreeing to participate meaningfully 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 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 thirty 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 thirty 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 out-of-state 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 an independent school that has been approved pursuant to Section 2223 (Requirements to Operate an Approved School) and 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 Tuition). 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 public tuition and special education purposes pursuant to Sections 2229 (Approval to Receive Public Tuition, Special Education Tuition) 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 Independent Schools Approved for Public Tuition, 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 (Enrollment: Requirements for Independent Schools Approved for Public Tuition, Students, and LEAs) 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 (Enrollment: Requirements for Independent Schools Approved for Public Tuition, Students, and LEAs) 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.