

**From:** Oliver Olsen [oliver@oliverolsen.com]  
**Sent:** Tuesday, November 15, 2016 9:59 PM  
**To:** Pepper, James  
**Subject:** Fwd: Letter  
**Attachments:** SBE-2016-11-15-V1.pdf

fyi -

----- Forwarded message -----

From: **Oliver Olsen** <[oliver@oliverolsen.com](mailto:oliver@oliverolsen.com)>  
Date: Tue, Nov 15, 2016 at 9:54 PM  
Subject: Letter  
To: Stephan Morse <[stephan@sover.net](mailto:stephan@sover.net)>  
Cc: "Holcombe, Rebecca" <[Rebecca.Holcombe@vermont.gov](mailto:Rebecca.Holcombe@vermont.gov)>, [michael.clasen@vermont.gov](mailto:michael.clasen@vermont.gov)

Dear Stephan -

Please see the attached letter.

Oliver

--

Rep. Oliver Olsen  
Tel: [1.802.585.5435](tel:1.802.585.5435)

--

Rep. Oliver Olsen  
Tel: 1.802.585.5435



**STATE OF VERMONT**  
REPRESENTATIVE OLIVER K. OLSEN  
HOUSE OF REPRESENTATIVES

November 15, 2016

Stephan Morse, Chair  
Vermont State Board of Education  
219 North Main Street, Suite 402  
Barre, VT 05641

TRANSMITTED VIA EMAIL

**RE: Proposed State Board of Education Rule Series 2200**

Mr. Morse:

As you know, the Interagency Committee on Administrative Rules (ICAR) reviewed the State Board of Education's (SBE) pre-filing for Proposed Rule Series 2200 at its meeting yesterday. ICAR determined that the pre-filing was incomplete and voted to return it to the SBE, in order to provide the SBE with an opportunity to develop a complete package for pre-filing. Without a complete pre-filing, ICAR was not in a position to prescribe a strategy for maximizing public input, and indeed, ICAR has not taken action to prescribe a strategy for this particular rule-making process, a statutory requirement under 3 V.S.A. § 820(c).

Given the fact that ICAR has responsibility to prescribe a specific strategy regarding the location, time and frequency of public hearings under 3 V.S.A. § 820(c), it would seem inappropriate for the SBE to move forward with any of the formal public hearings that the SBE had previously proposed, until such time as ICAR has received a complete pre-filing and has the opportunity to discharge its statutory duties.

It has come to my attention that the State Board of Education, at a meeting today, acknowledged the deficiencies with the pre-filing, and intends to move forward with the rule-making process, after addressing the concerns raised by ICAR. However, I am not particularly clear on what the SBE's intention is with respect to stakeholder involvement and public engagement. My understanding is that the SBE now intends to hold some sort of stakeholder meeting in Manchester next Tuesday, November 22, 2016. While this may

not be a formal public hearing, and may actually provide an opportunity for constructive dialog in a more informal setting, I remain deeply concerned about the timing.

As I indicated to you during our telephone conversation on October 25<sup>th</sup>, a public meeting on November 22<sup>nd</sup> – two days before Thanksgiving – will make it difficult for many who might wish to attend. As I indicated during that conversation – and as I reiterated during my testimony before ICAR yesterday – most schools in our area will be closed from Wednesday, November 23<sup>rd</sup> through Friday, November 25<sup>th</sup>. Many staff, students, and their families, and other interested community members, will be traveling on Tuesday afternoon/evening, and unable to participate in a public meeting. Due to the holiday, and the fact that the opportunity for meaningful input will be suppressed, I would urge you to work with key stakeholder groups to find a more suitable date that will maximize the opportunity for public engagement.

**If the SBE intends to press ahead with some sort of meeting in Manchester on November 22<sup>nd</sup>, I ask that you provide details of that meeting, including an agenda, as soon as possible.** There are a number of people whose holiday plans are in limbo, pending resolution of this question.

I did take note of your encouraging comments at the ICAR meeting that the proposed rule requiring independent schools to adopt all state and federal laws and rules applicable to public schools does not reflect the SBE's current intent. That said, I would draw your attention to the legal analysis prepared by Legislative Counsel that I sent to you on October 29<sup>th</sup>, which makes it clear that the rule, as currently drafted, is unambiguous, and the impact very clear, so regardless of what the SBE's intent may or may not be, plain meaning takes precedent.

The fact remains that the SBE has made no effort to modify the draft rule since it first entered the public domain in late July. Given some of the disparaging and inflammatory comments made by some members of board – e.g. how independent schools “chow down at the public trough”, many people are deeply suspicious of this particular rule-making process.

Good intentions are fleeting, but words endure. In this environment, people will be looking at the words on paper.

This is, without a doubt, a very contentious issue, but I do think there is a path to resolution. What we need now is a pause. I recommend that the SBE pull back the proposed rulemaking, evaluate the concerns that have already

been raised, conduct a line by line review of the proposed rules (something that the SBE has not actually done), make whatever updates the SBE feels are necessary (but within the constraints of delegated rulemaking authority, and consistent with legislative intent), and then engage key stakeholders for a collaborative and consensus-driven review and update of a draft that ultimately moves into the formal rulemaking process. The formal public comment period would hopefully uncover very few – if any – contentious issues. I am optimistic that this approach will yield an outcome that everyone can be proud of, and I hope you give this some consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "O.K. Olsen", with a stylized flourish at the end.

Rep. Oliver K. Olsen

CC: Rebecca Holcombe, Secretary of Education  
Michael Clasen, ICAR Chair