

July 24, 2019

## **Act 173 Advisory Group Draft Minutes**

### **Present:**

**Advisory Group Members:** Meagan Roy, VCSEA; Nancy Richards, VCDR-selected; Nicole Mace, VSBA; Daniel French, AOE; Marilyn Mahusky, DLP/VLA; Jay Nichols, VPA; Brenda Fleming, VASBO; Jeff Fannon, VT-NEA; Tom Lovett, CIS; Jeff Francis, VSA; Cheryle Wilcox, AHS-DMH; Mill Moore, VISA.

**Agency of Education (AOE):** Emily Simmons, Meg Porcella, Maureen Gaidys.

**Others:** Kyle Courtois, SBE; Susan Aranoff, VT DDC; Martha Tucker, Independent School; Krista Huling, SBE; Chelsea Myers, VSA; Kate Webb, VT House of Representatives, Education Committee; William Mathis, SBE; Oliver Olsen, SBE (via phone).

### **Call to Order, Roll Call/Introductions/Amendments to Agenda**

Chair Roy called the meeting to order at 9:14 a.m. and asked members to introduce themselves. Chair Roy asked if there were any amendments to the agenda; there were none.

### **Review and Approve Minutes from May 6, 2019 Meeting**

Chair Roy asked for a motion to approve the minutes from the May 6, 2019 meeting. Fleming moved; Mace seconded. Chair Roy called the vote. The vote passed unanimously.

### **Opportunity for Public to be Heard**

Chair Roy asked if there were any members of the public who wanted to speak. Susan Aranoff asked for more information on the website - contact information for members and meeting dates and times. She asked if she could be added to the email distribution list, if one existed. Chair Roy confirmed that there was not an email distribution list.

### **Report of the Federal Education Group (FEG)**

Chair Roy gave context to this topic. Following the last meeting, there were discussions with some members of the State Board of Education about an adjustment in the timeline and as a result of the timeline and proposed rules discussion, several education organizations were prompted to seek some outside input into the draft proposal. She invited Nicole Mace to speak give further context. Mace spoke about limited flexibilities and said that various members of the education community felt it important to have this examined through a different, outside lens. She introduced Sheara Krvaric, a lawyer with the Federal Education Group (FEG) based in Washington D.C. Krvaric explained that she has been involved in federal education work for 10 years and gave additional background on her experience. Her mission is to make complicated federal rules implementable. The task assigned was

to look at the state rules and guidance around Act 173 and advise on their alignment with IDEA. She spoke about how the federal IDEA law offers many more options than the current rules/guidelines show, and she specifically identified three areas 1) more options around how special education services are structured and delivered, 2) how IDEA money is spent and 3) alternatives to calculating Maintenance of Effort (MOE) and Maintenance of Financial Support (MFS). She continued that the federal government gives options and the states make choices from those options that best reflect state policies.

Krvaric shared the 4 broad areas of recommendation: 1) small difference between how state law and federal law defines special education, 2) aligning state policies on allowable uses of IDEA, Part B funds to federal definitions would help districts take advantage of the full range of spending options, 3) policies and procedures should ensure MOE and MFS calculations properly reflect spending for the education of students with disabilities while preserving Act 173's flexibilities and 4) states can use a variety of strategies to monitor local compliance with federal requirements.

There were questions and discussion on the definition of special education, limitations, and adverse effect. Chair Roy asked for comments/thoughts on the report. Mahusky asked for more recommendations on how the group should proceed. Krvaric spoke about the key recommendation to keep the rules specific enough to capture the compliance piece but broad enough that spending rules are not driving service delivery options. She recommended being cautious about the definition and not being too narrow. She added that the state will need a way to distinguish allowable special education costs from general education costs and offered that there are other models in other states that could be considered and that this would help to preserve spending flexibility.

There was discussion on specific organizations/individuals that could support these efforts, if services are as effective and as efficient as they could be, special education historically viewed as an add-on program and that is not the best way to serve struggling learners, best practice, special education expenditures, concerns that if the approach to funding isn't adjusted the opportunity for serving kids better will be missed, need to push pause and bring expertise (federal and otherwise) to the expertise at this table, not letting the rules drive the program, general education needs to include a broader spectrum of students, definition is overly restrictive, collective responsibility for teaching kids, the goal of integration, limiting the definition of special education if it is not consistent with federal law, if VT is drawing down less federal dollars than we could have, funding formula has several components that considers identification, strong recommendation that the funding rules are not divorced from the program rules, feeling optimistic about recommendations, flexibility to provide services when life situations change without rewriting IEPs, AOE's presentation (Titled, *Act 173, 2018 Orientation*) to the General Assembly aligning with today's comments, hope to reboot the implementation effort again, need to look at increased opportunities and cost effectiveness, implications of changing the funding model but not changing the practice in a conforming way, rules as a starting point being consistent with the ability to make sure everyone involved understands the charge, DMG and UVM report were analytical and gracious but essentially said we can serve kids better and more efficiently.

Secretary French spoke about AOE being supportive of outside expertise and thanked the education organizations (VSA, VPA, VSBA, VT-NEA and VCSEA) for engaging the FEG and commissioning this useful report. He spoke about the rules from 2013 and associated baggage and suggested that we

might have the rules we do because it is a reflection of the construct of our delivery model, that we do not have a disciplined system but are working towards that, that Act 46 is helping with that, the idea of having more restrictive guidelines for some districts, and optimism that Act 46 and Act 153 will help improve this. There was further discussion about additional guidelines for some districts, needing to be targeted because of limited resources available, risk of fiscal compliance being a red flag for programmatic compliance, not holding back districts that are ready because of vulnerable districts, and empowering work that is already in progress.

Chair Roy asked for thoughts, concrete or conceptual, about where we go from here as an AG and the desire to work with the AOE. She asked if we could assume that the AG and the AOE can work together with partners. There was discussion about accepting the concept of Act 173, the AOE's open-mindedness to reviewing this report, hope that AOE could contract with FEG, criticism that the special education rules are not being fully opened, that the rulemaking process has been disadvantaged by the lack of special education staff at the AOE, preference to have practitioners at the table to define special education and the vision of a more integrated system, involving AOE's new director of special education and DMG participants, needing the body of expertise of the FEG, questions of interpretation, evidence of breadth of differences across the state, benefit of an outside party, this report creating optimism, needing to hear about the AOE's work plan prior to making specific recommendations, collective agreement to pause and get this right but not sure how to make this happen.

Chair Roy asked if there were any comments. Martha Tucker introduced herself as working in an independent special education day school and said that AOE personnel is causing districts to require that contracts for services are provided differently and that is having a direct impact and AOE seems like the wrong entity to be driving the bus. She asked if rulemaking was put on hold if the actions by the AOE would also be put on hold. Chair Roy clarified that the AOE issued two memos recently on contracted services and contract with independent schools and requiring schools to define general vs. special education and said that the content of those memos and Act 173 are connected in that they are both related to the definition of special education. The FEG reviewed these memos. Tucker continued that the same entities that are driving the funding issues at the school level acknowledge that there are no rules to govern their practice. She said that AOE says there are no rules or precedent and that doesn't make sense. Nichols stated that this issue is not within the scope of this full AG; several AG members offered to stay after this meeting to discuss this issue further. French asked to respond to inaccurate information that was shared. He said that the guidance that is being issued by the AOE cites the current rules. It is a legitimate question whether the current rules are what we want them to be, but the AOE's job is to enforce the rules and the AOE is not arbitrarily creating rules, but instead addressing concerns in the field around how to implement current rules. There have been meetings with education partners and are considering additional clarifying guidance. Another member of the public asked that the FEG report be posted on the website. Representative Kate Webb asked if there were any states that could be identified that would align best with Vermont. Krvaric said several were identified, and that there is not one perfect match.

Chair Roy agreed with hearing from AOE about their work plan but would like to revisit a motion either before lunch or at the end of the day. She thanked Krvaric for her participation and her presentation.

Chair Roy called a recess at 10:34 a.m. with a request to reconvene at 10:50 a.m. Chair Roy called the meeting back to order at 10:57 a.m. and asked members of the public to sign in.

### **Draft Act 173 Workplan – Timeline, deliverables and Advisory Group input opportunities**

Secretary French said that the idea of a workplan came at the end of the legislative session as delays were anticipated in different areas and this is an iterative process. It will be webpage with an embedded simple Gantt chart, hopefully to be shared/posted by mid-August. French spoke about a variety of deliverables in the workplan: The Snapshot, Act 1, Shared School District Data Management System (SSDDMS), legislative reports and Act 173. Regarding Act 173, French addressed the deliverables largely related to the delay enacted by the Legislature, specifically draft guidance on documented costs. He explained that documented costs will reside in the guidance category and this is a major project and important to moving the work of the AG and SBE forward. French hopes to have a draft produced by end of September and to give the AG the opportunity to react to this. This work was started prior to the FEG report. French said the AOE has always consulted with other entities and that pursuing such expertise is of interest and there is an opportunity and that the AOE will be reaching out to some partners.

French continue that a longer-term project is rules for independent schools and that is identified in Act 173 as something to be delivered further over time and addresses non-special education issues with independent schools. This work will start in September and run through Fall 2021. A related issue that adds complication is that independent schools cannot receive block grants and model language needs to be developed to address this. In September, a new special education monitoring system will be initiated; this will require ramping up some of the monitoring of the rules and this is a project that our new State Director of Special Education is leading. On the practice side, the major piece of work is seeking coherence within the agency on what is going to be our approach to supporting districts with the changes in practice necessary. An initial framing document for technical guidance is in progress and a draft will be finished by August 15. It will include the activities that districts need to be involved in to successfully navigate Act 173. This will look at current regulatory guidance that could be leveraged more effectively and how Multi-Tiered Systems of Support (MTSS) is integrated to a more coherent model. AOE will be looking for input from the partners, AG and SBE on this guidance.

Other deliverables: A Request for Proposal (RFP) to license some scheduling assistance software that will provide a tool and expertise to schools on how to best utilize their staff, a specific area identified in the DMG study; rate-setting related to independent schools; Rule Series 2200; and some parallel work on independent schools. French summarized that cost documentation work will be provided by the end of September and the framing guidance document will be ready by mid-August. This work is happening concurrently, AOE is not attempting to divorce the two, there is an intersection in the work that needs to be contemplated.

There were questions/discussion on: technical assistance set-aside and delivery, supports identified under the ESSA framework, \$200K of direct training, parallel work and need for coherence, framing document and theory of action, complex construct and importance of input on framing the work, DMG and UVM reports, need to focus on literacy instruction, logic model needs to include how funds are used, overidentification (or not) of eligibility, what impact the changed definition of special education would have, definition being important but not as impactful as one might think, having a

document prototype and then seeking outside expertise, the challenge of engaging this group in focused study, more information will help make better decisions, several confusing definitions adding confusion, prototype draft will be a good starting point, FEG having criticism that Vermont's definition of special education is inconsistent with federal law, Susan Marks' review of the FEG report, if we have what is needed to articulate the desired end state of Act 173 and if we do, what is the achievable end state, pivotal role of this group to advise the SBE and the legislature, suggestion that the AG be in a position at the end of December to report to the legislature with recommendations on Act 173, visions of legislation and how to navigate implementation, critical point in history of reorganizing our special education financing system after 100 years and importance of taking responsibility for this issue. Chair Roy acknowledged French's comments and said if guidance is being developed on rules that the AG is not sure is in keeping with federal law, then it feels like the cart is put before the horse. French reiterated the plan to prototype vs. foreclose on a decision.

### **State Board of Education Input – Rulemaking timeline**

Chair Roy invited Krista Huling, State Board of Education (SBE) Chair to address the AG and share the SBE's current thinking on the rulemaking process and the delay. Huling outlined the SBE's timeline: September – board retreat; October – having a joint meeting with the SBE and AG and discuss AG's revisions to the AOE draft rules. She requested the AG's specific feedback, with alternative, concrete language and/or recommendations. She spoke about the SBE needing to listen to this group of diverse voices. November/December – SBE will vote on alternative language put forth by the AG. The SBE will then draft their own version of the rules. January/February - public testimony will be taken. March - SBE will reflect on latest draft and revise as needed. April - warning a vote to initiate formal rulemaking. She said this is the current work plan, subject to change and hoped that this workplan would help the AG understand what is needed from them.

There was discussion on October being ambitious based on the information from the FEG report, hope that there were not two distinct approaches between the AG/SBE and AOE but a coordinated, collaborative approach, technical rules needing expertise, flexibility for the joint meeting scheduled for October, SBE wanting to hear disagreements on policy, AG needing a work plan, multiple variables to consider, the efficiency of the AG's work, reconsideration of subcommittees, difficulty in setting a path without knowing AOE's path, SBE's request for recommendations and alternative language, clarity needed on what is being proposed, walk-through of rules, how feedback was collected, focus on funding rules, incorporating AOE's plan into the AG's trajectory, that SBE member Oliver Olsen will be calling into Act 173 meetings, that SBE's timeline is too aggressive and will be adjusted by 1-2 months, that joint meeting will be delayed to November or December.

Chair Roy adjourned for lunch at 12:01 p.m., to reconvene at 12:45 p.m. Chair Roy reconvened at 12:57 p.m.

### **Update on Independent Schools Rules**

Secretary French spoke about this conversation going back to February when he offered for AOE to take an internal look at this and the conclusion was that the independent schools cannot be treated the same way in terms of the block grant. Stakeholders were invited to react to that and there was a delay in meeting with stakeholder groups because they wanted to wait until school was out. There was a meeting with independent school representatives and were looking for feedback on if a block grant might be possible and have received none. Current priorities are documenting the cost document, but

there is an element that needs to be fleshed out with independent schools since block grants cannot be given to them, and this work will probably take a year. AOE sought stakeholder feedback and haven't received any that the logic model isn't reasonable so will move forward on this and bring back a work product, once completed.

There was discussion on a statewide contract, interplay between special education and regular education issues, model contract for improved special education operations, creating subsequent drafts in independent schools as part of the workplan, some work will start this fall, documented costs will take capacity away from this, goal is to be clear about the deliverables, sharing info with the AG so they will know when AOE is best poised to receive feedback, delay presenting an opportunity but need to keep up momentum, and that this is a good first step.

Chair Roy spoke about next steps: motion to engage with FEG, reason to pause, the State Board's rulemaking process and their request for draft language, and re-opened that conversation, specifically. There was discussion on meeting with the SBE, the challenge of not having staff and resources, holding the motion, having a subgroup, hearing from stakeholders/field, working as informal group outside the AG, need for alternatives to collecting feedback for the SBE, needing something to react to, helpful to have AOE's thoughts, identifying points of agreement/alignment and where outside support is needed, AOE's plan to finalize the document by the end of September, scheduling a meeting to hear AOE's reaction to the FEG report, revising the SBE's timeline which was created prior to receipt of the FEG report, the AG's timeline, AOE not having the perspective of business managers and field practitioners, that "we are better together," that it is not helpful to have AOE's capacity disparaged, relationship between the rules and the professional learning, cost documentation guidance coming under the rules, the last rule revision, clarity needed around moving the charge, need for a subcommittee to make recommendations, education organizations that contracted the FEG work meeting with AOE, September agenda item being a report from the AOE/education organizations group, collaboration, breaking down the formality, and having the AG be the clearinghouse for the informal work outside the AG. Chair Roy asked for questions to be answered/information to be provided by September: AOE's debrief/reaction of the FEG report, what are the reservations and what informs them, Agency's thoughts on what greater flexibility would look like in respect to service delivery, clarity on professional learning plan, and if there will be any other versions of the draft. Roy recapped what was expected at the September meeting. She said the AOE cost documentation draft guidance will be addressed at the October meeting. In September the AG will need to recommend a more concrete plan for the AG for drafting rules and she welcomed ideas on how best to do this.

Chair Roy said future AG meetings will start in September; a generic Doodle poll will be created and distributed. Previously, meetings were the first Monday of each month. There was discussion on a September meeting date; a Doodle poll will be sent. Starting in October, meetings will be the first Monday of the month from about 9:30 a.m. – 1:00 p.m.

## **Adjourn**

Chair Roy adjourned the meeting at 1:53 p.m.

Minutes prepared by Maureen Gaidys.

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