

September 16, 2019

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

### **Present:**

**Advisory Group Members:** Meagan Roy, VCSEA; Karen Price, 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; Sarah Baker, VCSEA, Practitioner; Lisa Bisbee, VT-NEA Practitioner; Mill Moore, VISA.

**Agency of Education (AOE):** Judy Cutler, Meg Porcella, Maureen Gaidys.

**Others:** Philip Ehler, VATR; Greg Van Buiten, EDLaw New England; Susan Aranoff, VT DDC; Martha Tucker, Independent School; Chelsea Myers, VSA; Marianna Donnally, Department of Mental Health (DMH); Traci Sawyers, VCSEA; Kate Webb, VT House of Representatives; Kim Gleason, State Board of Education; Lola Duffort, VTDigger; John Carroll, State Board of Education.

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

Chair Roy called the meeting to order at 9:32 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 July 24, 2019 Meeting**

Chair Roy asked for a motion to approve the minutes from the July 24, 2019 meeting. There was a motion and a second to this motion. Nichols noted that at the top of page 3, "Act 53" was referenced when it should have been "Act 153." Chair Roy called the vote to approve the minutes as amended. The vote passed unanimously.

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

Chair Roy asked if there were any members of the public to be heard. Aranoff asked to have the Advisory Group members' email addresses listed on the website, along with the schedule of meetings. Chair Roy said this request was already made and this information is available. The links to these were provided to Aranoff.

### **AOE Framing Documents for Technical Assistance**

Secretary French referenced a document titled, "Developing Systems to Support the Success of All Students – Act 173 Summary of Technical Guidance," referred to internally as a framing document. This is the result of work done this summer to achieve some coherence to providing technical assistance to school districts under Act 173. He spoke about the focus on thinking of school districts as systems as a result of Act 153 (2010), where special education and curriculum was envisioned to be centralized at the supervisory union level. During the Act 46 deliberations, it was discovered that some districts had not yet achieved this centralization. The idea was to build upon this work to

centralize at the systems level and to acknowledge the work of Act 46. This framing document introduces what will be future technical guidance over the next few months on issues already in regulation that are designed to enhance the development of systems. There are 4 areas highlighted and required: coordinated curriculum, local assessment plan, needs-based professional development system, and educational support team. The difference is having this done across a single system. Secretary French continued that AOE will produce future technical guidance documents: September – educational support teams; October – local assessment plans; November – curriculum; and January – needs based professional development system. Chair Roy asked for clarification that these documents would be sub-guidance and asked if the Advisory Group would get to review them. Secretary French replied that they would certainly see it, but soliciting feedback is not scheduled as the law requires AOE to provide this technical assistance. He said the plan is to frame out the larger conversation and then engage stakeholders and the Advisory Group in a more detailed conversation.

There were questions and discussion on how this will inform the Agency's approach to professional learning for this school year, making a more coherent plan, scheduled roll outs of targeted technical assistance, and focusing on the four elements. Chair Roy spoke about the Agency's responsibility to provide guidance and asked what they might be looking for from the Advisory Group around informing this work. Secretary French asked if this makes sense at a high level as a plan of action and acknowledged that Act 173 is not on everyone's radar as major policy work, but it should be by the end of January 2020. He explained that the AOE is prompting the conversation and the theory of action is that school districts need to confront the equity issues in their systems. He asked if the four elements make sense as a coherence-making exercise and/or if something might be missing from these and more feedback would be solicited as specifics are developed.

There was discussion on this informing the implementation, being a very useful document, the rollout of specific guidance being helpful, the practical application and differentiation of capacities of school systems, observation of roles, practical measures needed for implementation to have fidelity, coordination among all elements, and Act 173 affecting much more than the top level of systems. Secretary French continued that the framing and sub-framing will conclude by the end of January, that this is a multi-year process that can't wait years to begin, and the importance of having a theory of action that will move systems forward by looking for system levers and also move us towards specificity. Chair Roy asked about stakeholder input. Secretary French said there are initiatives underway to do surveys (just completed MTSS) and the need is to raise awareness of this initiative in the field. He referenced the Federal Education Group's (FEG) recommendation to have a disciplined approach to cost accounting. Right now, the work is identifying levers and taking this out to the field in different forums - curriculum coordinators, guidance counselors, superintendents' leadership and statewide special education directors. Chair Roy expressed the need for other partner organizations to engage with the AOE. Secretary French said the plan is to engage as many stakeholders as possible.

There was discussion on special educators being excited about the elimination of time schedules and spending more time with students and the expectation that some of this would already be in place, from the field's perspective that this can't happen fast enough, high level of complexity of this work, the AOE work plan supporting this transition, having guidance on old regulations support the change in direction, focused monitoring, parent voice, resurrection of the AOE special education monitoring process and the idea of presenting this process to the Advisory Group.

Chair Roy asked for feedback for the AOE on the high-level approach to this. There was discussion on the Medicaid funding piece, that Medicaid crosses agencies/divisions and that this might be a good group discussion item, two recent developments that cause worry (DMH working with AOE on a review of Success by Six and the overhaul of the disability services), understanding the manifestation of these other pieces in relation to Act 173, being careful on who is invited to address this group, prioritizing the Advisory Group's time, residential review and developmental services/DMH, importance of raising issues that require the attention of the Advisory Group, implementation of Act 173 is monumental, the need to think differently about how resources are leveraged to best serve students, that perception matters, if families suddenly feel that everything they rely upon is being disrupted these efforts will be thwarted, risk of relationships breaking down between schools and families, Secretary's role to address the disconnect of work between agencies/departments, that Bilodeau (Wilcox) could offer some input on this, alternate assessments still underway per AOE website, and that in the past alternate assessments have not been done very well.

Chair Roy asked for public input on the framing document. Greg Van Buiten, EDLaw New England, spoke about the four main goals not being reflected in the same order on the following pages. He spoke about goal three not being just about alternative assessments, but assessments in general and asked for clarification. Secretary French said this starts with the definition of local comprehensive assessment system and that it is a more general issue; alternative assessment is about compliance and accountability with Every Student Succeeds Act (ESSA). French said that the change in order does not reflect a change in priorities. Aranoff spoke about Bisbee bringing up Medicaid and Act 113 (2015) and said that this created the all-payer model which says all Medicaid funding services coming into the state need to come into alignment with the all payer model. The discussion of the flow of Medicaid to the schools is very timely and relevant.

### **AOE Work Plan**

Secretary French offered that this work plan is a simple Gantt chart and can be found on the AOE webpage on the "About Us" section. There are many major policy initiatives in play, and it is important to break those down to identify a schedule of deliverables. The list is not all-inclusive but shows the major initiatives: Act 46 implementation, Education Quality, Major Legislative Reports, Perkins V State Career Technical Education (CTE) Plan Development; and a Statewide School District Data Management System (SSDDMS). Secretary French spoke specifically to the Act 173 work: technical assistance to school district systems, draft documentation of costs, monitoring system, model contract for independent schools, draft rules on rate-setting, current rules and procedures, and technical support on a statewide scheduling tool (working on an RFP). Incremental updates will be made to this schedule of deliverables, if needed. If a major change is made, that will be communicated widely.

There were questions on interpreting the Gantt chart - the end of the bar is the completion date, stars represent the due date, colors represent different teams and progress along the continuum; this will be updated on the web in real time. Secretary French said that Act 173 remains the major policy initiative that will drive much of the other work; it touches almost every other aspect of the system. There was discussion on draft guidance on documenting costs, feedback at the October meeting, an important internal tool for the AOE, collaboration, weighing in with different stakeholder groups as iterations progress, the Advisory Group's opportunity to inform this work, guidance documents geared at schools districts, parallel engagement of the Advisory Group, implementation triggers, the

four levers in current regulation, disruption to the system that interrupted some of this work, memos designed to raise awareness (re-affirmation of rules for some, not for others) and the monitoring process and accountability.

Chair Roy asked for questions. Mace asked out how the \$200K of professional development will be delivered to the schools. Secretary French said the work is corralling these down to specificity. Mace asked about the action on the ground. French spoke to a communications plan that would advance a coherent systems design. Representative Webb spoke to the intent of the bill and the idea that someone like District Management Group (DMG) could help districts and provide financial support to the AOE to provide professional development. She explained that the legislature cannot dictate who will perform the work but can legislate funds. Secretary French said the AOE is in direct communication with DMG. There was discussion on many changes over the last year, Act 46, new Secretary, many new staff, etc. Chair Roy asked about giving input on guidance. Secretary French assured the group that there is movement toward more specificity. He noted that the legislature contemplated Act 46, Act 173, SSDDMS, SLDS, and lead in drinking water all simultaneously, coupled with a new Secretary and retirements of the special education director, special education assistant director and special education state director. He spoke to a theory of action and tending to the four things and the expected results. Representative Webb concurred that the legislative intent is to have Act 173 go incredibly well as opposed to having it go incredibly fast. She added that it is not the speed, but the degree of excellence that we should strive for.

Chair Roy suggested that Advisory Group members get feedback from their respective organizations on the four levers and come to the next meeting, in two weeks, with this feedback. She added that there are also stakeholders (curriculum coordinators) that are not represented here. Chair Roy offered to reach out to the Andrew Jones, VTCLA chair, to get their input on these levers. There was a question on intention of uniformity around the state on the four levers. Secretary French said that gets to the question of specificity and the uniformity of effort into a well-articulated curriculum and there will be places to work intentionally on a more uniform approach and perhaps a state curriculum, which state curriculum directors support. Literacy instruction is also an area of concern and this will get some attention.

Chair Roy recessed for a 5-minute break at 11:05 a.m. Chair Roy reconvened at 11:16 a.m.

### **Discussion: Recommendations to State Board of Education regarding Draft Rules**

Chair Roy said the plan was to go until noon, stop for lunch and continue with this item, which was discussed in July with the charge to attend the October State Board meeting with specific recommendations for changes to the special education rules, with alternative language identified, not just issues and there was emphasis on the Advisory Group's consensus. The focus is on the rules necessary to implement Act 173. There are two meetings between now and the October 16 State Board meeting. Today will be a discussion of key areas of agreement and issues to be addressed and the next meeting will entail a more formal adoption of recommendations. There was a question about which rules. Chair Roy suggested starting with Rules series 1300 and bringing in other areas if related and as needed.

Chair Roy asked Mahusky to introduce her draft changes to Rules 1300 Series and how it came to be. Mahusky said that the Disability Law Project (DLP) and stakeholder groups convened and started

revising the 2360 series and saw that there was more connection with 1300 series, so they created proposed changes to 1300 series as a good starting point to incorporate some of the flexibility that the FEG report had highlighted.

The first change was to add a statement of purpose to reflect the goals of the legislation in the funding and programmatic regulations. The next change was the definition of special education, which mirrors the federal definition. Mahusky apologized for not being able to provide a side-by-side comparison and offered to do so next time. She asked for the best way to address these proposed changes; rule by rule was decided. Mahusky continued with striking language that says, “that specially designed instruction cannot be provided within the schools standard instructional conditions or provided through the schools education support system...” so that broader language can be provided. Mahusky clarified that the change adopts the federal regulation in its entirety, and it keeps Vermont’s regulations for co-teaching.

There was a question on transition services and if this applied to state or federal law. Mahusky will clarify if Vermont’s existing transition services mirror the federal regulations. Chair Roy paused for discussion and clarified that “a” and “b” are federal definitions and “c” and “d” are in the existing Vermont regulations and not changed. She asked if it made sense to change the current definition to match federal regulation. There was discussion on changing the definition, removing the restricted language, giving practitioners greater flexibility, a less narrow and more broad approach, and helping with greater inclusion. Francis suggested having Roy and Mahusky summarize each point/change as discussed. Mace suggested making it very clear that this language is tied to the federal regulations so that we are aware, should there be changes to the federal regulations. There was discussion citing the federal regulation within this document.

Mahusky spoke about the start of page 4 and changing “student with disability” to “child with a disability” to be consistent. There was discussion on the construct of adverse affect, why this series doesn’t apply, and allowable services. Chair Roy summarized as follows: this change keeps definition of services in alignment with federal regulation (sections a and b), it was noted that we need to be clear that this comes from federal regulations, section c (co-teaching) and section d (transition) are from existing Vermont regulations. Mahusky will check to see if this transition language is aligned with federal regulation on transition. This allows loosening of restriction on what special education funds can be used for. There was general agreement among the group. There was a question as to why we were not voting on these changes. Chair Roy explained that she wanted to discuss this today, read through it and think it over and vote on it at the next meeting. It was suggested that there be a redlined version to vote on at the next meeting.

Mahusky moved to series 1304, Maintenance of Effort (MOE). She said they looked at the AOE’s definition of MOE, the recommendations of the FEG and the definition in federal regulations and it made sense to align with federal law, to achieve as much flexibility as possible. What was learned from the FEG report was that Vermont might have been implementing its system in a far narrower perspective than needed. Relative to MOE, what is required under federal law is that each school district needs to spend what it did the year prior in special education. The worry is how census-based funding will affect MOE. By adopting the federal requirements and looking at other guidance and resources, in actuality there are more expenses that can be utilized that are being spent in general education that could be applied to MOE. There was discussion on a meeting with education partners

and AOE where CIFR (Center for IDEA Fiscal Reporting) had raised some red flags, good explanation and documentation to counter this, conversation needed with OSEP, opening for more focused discussion, and the need to proactively report and get feedback. Secretary French spoke to giving feedback, and that AOE is working on some reconsiderations based on the FEG report. He added that from talking with CIFR, FEG and others that we are on the cutting edge of redesigning a new special education funding system and there is liability. He added that flexibility is predicated on having a system of documenting costs. The FEG doesn't understand the state delivery model and we need to cultivate this complex piece of work.

John Carroll, State Board Chair, addressed the Advisory Group and thanked them for their work on this. He offered that the State Board is not nearly as conversant as this group on this topic. He added that the State Board adopts the rules and emphasized that the rules will be owned by the State Board. As chair it is his intention to have the State Board engaged in the final rulemaking process. He advised the Advisory Group to do as the legislature does and underline what is added and strike-through what is being removed. He spoke about changes to the existing rule and changes to the AOE's draft rules and the need to see both simultaneously. He welcomed their commentary and offered that the State Board will be interested in hearing from the Advisory Group in October and that the State Board is also allowing time on the November and December meetings. He shared that there will be public hearings in early 2020 and by spring 2020 there should be a draft. Carroll spoke about the importance of getting the first draft in early. There was discussion on using a side-by-side document, deliberative process having fewer vs. more differences, legislative intent, that the State Board might benefit from seeing: existing law, proposed law by Advisory Group, AOE's proposed law and rational for each in Act 173 context. Discussion continued on a date certain for receiving feedback, rulemaking process/timeline, second adoption of rules that could be different, and the State Board having its own legal counsel. Chair Roy offered that part of the reason/rationale that this is not a side-by-side document is because this is expected to be a conceptual conversation. Chair Roy tabled discussion on MOE to resume after lunch recess.

Chair Roy recessed for lunch at 12:07 p.m. Chair Roy called the meeting back to order at 1:08 p.m.

Chair Roy said the day's goal was to focus on the conceptual ideas being offered and reopened the conversation for comments on MOE. Mace suggested cleaning up subsection "c" to be consistent. Chair Roy explained that this was the section that caused CIFR concern and that this is not cause for alarm as there are good explanations.

Chair Roy moved to 1305.1, allowable expenditures. Mahusky explained that the first part of the sentence was kept, and special education was removed, and this language tracks the federal regulations. She noted that in "d," all costs associated with that placement are allowable and the rationale is that it be consistent with federal law. There was discussion on the intent being flexibility in services provided, not having the calculation based on specific student counts but calculating the MOE and what can be counted as such, that this definition expands beyond the AOE language, schoolwide reforms, comprehensive strategies, and defining general education expenditures. 1305.2, permissive use of funds. All stricken. There was discussion on not needing that definition, and whether the AOE's version had this stricken as well. 1305.3, source specific permissive use of funds. This would be amended to include "with and." This change would remedy the situation of flexing funding to support students on IEPs and students who are struggling. 1305.3.3, coordinated early

intervening services is stricken. The rationale is that all students must be able to benefit from census-block investments. 1306.1, census block. This section says the grant shall be calculated in accordance with statute and that stakeholders shouldn't have to reference both rules. This was to simplify and clarify. 1306.2.4, special education administrative costs. This section was amended to be consistent with statute for case management; it tracks federal legislation. 1311, evaluation – there was a comment that this needed more clarity as it was vague and unenforceable.

Chair Roy asked for specific questions needed before taking this back to appropriate groups for feedback in advance of next meeting. She explained the task is to 1) get a redlined version from Mahusky and distribute to the Advisory Group 2) review revised document and reflect on today's conversation and 3) come back on October 7 in a place to adopt a recommendation to go to the State Board on October 16. There were questions on the direction that AOE is taking, conversations between the AOE and stakeholder groups, access to the draft and getting this information as soon as possible. Secretary French offered that the AOE has two design criteria and the Advisory Group has only one, flexibility. AOE has that but also must set up a framework to document costs. There was discussion on one driving the other (meeting the goals of statute and allowing flexibility to improve the delivery of services and this driving the cost document), piecemeal delivery, opportunity for consensus, flexibility coming into conflict with documenting costs, discomfort putting the burden on locals to decide how to document costs, using new methodology retroactively, no predisposition of AOE to be overarchingly restrictive, AOE's responsibility to the cost document, having confidence in this work, alignment of the census block and cost documentation, conceptualizing where the controls exist, entanglement of flexibility intended and ensuring MOE without hampering flexibility.

There was discussion on what was being requested by the State Board, how to present requested information, when the AOE will present their new version of rules, opportunity to reconcile the two versions, getting this right and not rushing it, having something ready for October, but reserving the right to postpone, aggressiveness timeline, worry over pattern of waiting, much work to be done, weighing in before legislature on the formula and other concerns, these meetings cannot be consumed with the foundational pieces of Act 173 and moving deadlines, getting the redlined version out to the AOE for possible agreement, that MOE is the biggest challenge.

Chair Roy shared other items to be addressed: follow-up with Cheryle on AHS perspective on Medicaid, Success by Six, etc., invitation to the weighting study group to present their report and reaction to rules for next month. It was suggested to invite some local school officials to attend the November meeting. There were questions about the model contract for independent schools and reviewing the cost documentation piece which is not in rule (by design).

Chair Roy announced that the next meeting is October 7, 2019.

### **Adjourn**

Chair Roy adjourned the meeting at 1:56 p.m.

Minutes prepared by Maureen Gaidys.

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