



Act 173 Advisory Group  
January 3, 2022, 9:00 a.m. – 11:30 a.m.

## Draft Meeting Minutes

### **Microsoft Teams Virtual Meeting**

**Call In: 1-802-828-7667**

**Conference ID: 555 865 581#**

*Purpose of the Advisory Group per [Act 173 of 2018](#): To consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.*

#### ***Present:***

Advisory Group (AG) Members: Meagan Roy, Chair; Marilyn Mahusky, Vice Chair, Disability Law Project; Rachel Seelig, Disability Law Project; Jeff Fannon, (joined at 9:10 a.m.), Vermont-National Education Association (VT-NEA); Jeff Francis, Vermont Superintendents Association (VSA); Peter Garrecht, Vermont Council of Special Education Administrators-selected special educator; Cheryle Wilcox, Agency of Human Services, Department of Mental Health (DMH); Karen Price, Vermont Coalition for Disability Rights; Jay Nichols, Vermont Principals' Association; Mill Moore, Vermont Independent Schools Association (VISA); Lisa Bisbee, VT-NEA-selected practitioner, (joined at 9:58 a.m.), Sue Ceglowski, Vermont School Boards Association; Mat Forest, Council of Independent School (CIS); Brenda Fleming, VT Association of School Business Officials (VASBO).

AOE: Meg Porcella; Emily Simmons, Jennifer Perry, Chris Case, Dan French, Maureen Gaidys.

Others: Susan Aranoff; Marianna Donnally, Chelsea Myers

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

Chair Roy called the meeting to order at 9:03 a.m. and called roll. Moore expressed concern that the draft from VT Legal Aid was supposed to be worked out with Novotny, and her court appointment made that collaboration incomplete; additionally, the draft language was received too late to consult with independent schools and part of the language is not relevant and would require a change in statute. Based on this he requested that there be no vote today on that agenda item. Chair Roy acknowledged that this item might not be ready for a vote today, and it will remain as it is, and this will be revisited during discussion. She also added that the AG can make recommendations for statutory changes.

#### **Review and Approve Minutes from December 6 and December 22, 2021 Meeting**

Nichols moved to accept minutes from the December 6, 2021 meeting; Fleming seconded. There was a correction offered that the minutes record that Price was present at the December 6 meeting and there was a comment from Moore about specialized instruction sitting on top of core instruction (second page near the bottom). Chair Roy called a roll call vote. The vote passed 11:1:1. Yea: Fleming, French, Nichols, Fannon, Francis, Price, Mahusky, Garrecht, Ceglowski, Wilcox, Roy. Nay: Moore. Abstain: Forest

Fleming moved to approve the minutes of the December 22, 2021 meeting; Mahusky seconded. There was a correction offered that the minutes record that Price was present at the December 22 meeting. Chair Roy called a roll call vote. The vote passed 10:1:2. Yea: Fleming, French, Nichols, Fannon, Francis, Price, Mahusky, Garrecht, Ceglowski, Roy. Nay: Moore. Abstain: Forest, Wilcox.

## Opportunity for Public to be Heard

There were no members of the public to be heard.

### Discussion/VOTE - Rules Series 2200

Chair Roy gave context for this item and explained that at the end of the public comment period, several issues were revealed that this group had already discussed. The AG endorsed the current set of rules and because the issues raised were the same issues that the AG spent a lot of time discussing, the AG decided to revisit the endorsement and determine if changes would be recommended. The two issues were open enrollment/non-discriminatory enrollment practices and rate-setting and information provided to the AOE in the approval process. She said the plan was to discuss this item and possibly vote on it. Mahusky and Novotny were asked to work together to draft language. The AG can decide to use this draft, amend it, or make amendments. Chair Roy said the State Board of Education (SBE) has a subcommittee that has asked the AG to address enrollment and ability to serve students with disabilities (SWD) and tuition and rate setting.

Chair Roy asked Mahusky and possibly Seelig to share the work that went into this draft. Mahusky spoke about the intent of legislation (open enrollment for SWD) not being addressed in the original rules. She and Novotny went through the rules and tried to proposed changes that would more clearly capture the intent of the legislation and ensure that SWD are not discriminated against in the independent schools' enrollment process. They tried to ensure non-discriminatory language, open enrollment, and the process of delivering services for SWD and that there is language for the Independent School (IS) and the Local Education Agency (LEA) to work through that process. Mahusky's recommendation was to not vote today, but defer a vote for another month, send this to the SBE's subcommittee and work together to resolve what appears to be a conflict for some.

There was discussion on what part of this is disagreeable to Moore and if a student on a Section 504 plan can enroll in an IS. Moore said he is agreeable to non-discrimination and that any approved independent school taking public money needs to accept special education students. Moore spoke to the provision (Rule 2230.2 subparagraph 2) and expressed great concern with this language for the IS community and said it is not acceptable. He added that there are other changes that are outside the purview of the AG. There was discussion on Section 504 plans being an oversight of the legislature, VCSEA believes there is a difference in who is responsible for Section 504 plans (school) vs. IEPs (LEA), how much progress Mahusky and Novotny made with collaboration, Moore wanting to limit language to students on IEPs, working towards consensus before taking this back to the SBE subcommittee, section 2229.4, section 2232.2, having a side-by-side comparison, not every struggling learner has a disability and sometimes enrollment is deferred and contingent upon evaluation. Secretary French reminded the group that there are issues at play around choice, eligibility and placement that pertain to public school setting that could be impacted by this as well.

Chair Roy said she was reading that the group did not want to approve this draft language today; she encouraged the AG to come up with some recommendations for action/next steps. There was discussion on the AG unanimously endorsing the draft language that was already sent to the SBE, continuing discussion, and separating items into immediate consideration and subsequent consideration, preference that this not be broken into two sections and instead that the AG send some direction to the SBE subcommittee, and signal to the SBE subcommittee that it is important to make some clarifying recommendations that are comprehensive.

Chair Roy offered two paths: 1) Rely on the SBE subcommittee (which has representation from the AG) to engage in this process and the AG will endorse the final draft set of rules, or 2) AG decides on a draft set of rules that goes back to the SBE subcommittee. She added that the latter feels inefficient and duplicative. She said she preferred the first option and the second option had logistical challenges. There was discussion on the importance of this group coming to consensus before taking anything to the SBE subcommittee, consensus on intention that rules should not discriminate, articulating the challenges/difficulties, Moore has other concerns and has not had adequate time to review this, that the AG could change its endorsement, that the SBE subcommittee meets January 7, and that the AG's opinion needs to be conveyed to the SBE subcommittee.

Chair Roy asked for a motion for this item. Moore suggested that he would meet with Mahusky and Forest and anyone else interested and report to the subcommittee on progress. Chair Roy said she would still need to report to the SBE on the AG's opinion. There was discussion on conveying to the SBE subcommittee that the potential majority of the group would agree to continue with a reconsideration of the language, majority agreed that there are issues and that the SBE subcommittee is a good vehicle to address these, preference to stick with original recommendations, wanting to have both VT Legal Aid (VLA) and VISA happily on board. Fannon offered a motion/consensus statement: The AG has received additional comments from VLA that have sparked further conversation and the AG is going to pursue those comments in order to make a firm recommendation to the SBE. Roy reiterated that importance of a consensus statement/opinion if the AG is changing their endorsement. Francis moved that Chair Roy report to the SBE subcommittee that the sense of the Act 173 AG is that the language in the currently proposed rules can be improved for clarity around certain issues that were raised in the public comment period and that we request an opportunity to come forth with specific recommendations that will come out of work that is being led for the Act 173 AG by Mahusky and Moore; Mahusky seconded. Chair Roy called a roll call vote. The motion passed 12-1. Yeas: Fleming, Nichols, Fannon, Francis, Price, Bisbee, Mahusky, Forest, Moore, Garrecht, Ceglowski, Wilcox. Abstain: French.

Chair Roy called a 5-minute recess at 10:31 a.m. and reconvened at 10:36 a.m.

### **Discussion /VOTE – Act 173 Stakeholder Working Group Update and Recommendations**

Chair Roy explained that this conversation is about the concept of the July 1, 2022 implementation date for Act 173 and shared the [Act 173 Implementation Adjustment Worksheet](#) that was used by the Act 173 Stakeholder Working Group to sort out the benefits and challenges with delaying in part or whole or not at all the implementation of Act 173. There was discussion on the challenge of having people outside this group understand the complexity of this, implications of the situational factors (related to the pandemic), the Legislature will likely require a lot more detail and testimony on this, change in financial formula is necessary in order to enact best practices, how we implement this major changes in the context of the pandemic, we can't wait for systems to be ready for this technical change, that this change will drive their readiness, being cautious, and not delaying implementation.

Chair Roy said she needs to be able to articulate the AG's opinion for the Legislature and the AOE's position is relevant and the AOE needs the AG's opinion as well. There was discussion on timeline for feedback and working through the different pieces of the adjustment worksheet. VLA would recommend no delay with implementation, recognizing that there will be some short-term inequities resulting from this. VCSEA is concerned with the guidance and professional development (PD) on SLD and adverse effect from

AOE is late getting released and gives the field 6 months to implement; this is “one more thing” and the window for implementation is very short. VPA is worried that educators will not be ready to implement this. Garrecht said many teachers will not be ready, but they will try and do their best and some districts will do better than others, but all will not be 100% there from the start. He asked about consequences for districts who cannot implement. Bisbee said there is a small handful of districts moving towards readiness and wondered if this could be implemented as more of a carrot than a stick. She added that an MTSS system impacts all educators and if Elementary and Secondary School Emergency Relief (ESSER) funds could be used to support the implementation. Seelig said that MTSS works better if the new rules for SLD and adverse effect are used and asked if the money could be used to pay overtime for teachers this summer and said one year of delay will not necessarily make anyone any more prepared. Chair Roy said we cannot expect that teachers will want to work this summer. Fleming said her group is very concerned with funding and fluctuations in revenues based on the census block grant and how that may or may not change with the Weighting Study and agrees that with everything going on teachers are not going to want to work this summer. There was discussion on Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to support this, MTSS being consistent with education recovery, implementation of a data collection on MTSS, timeline if/when the AOE will have an official position on delay, recovery lens needs to be used for any/all initiatives, and that AOE hopes to have a formal position by February 1. Fannon said he recommends waiting for consensus on delay before submitting report and spoke about the intent for PD before funding model change and not supporting teachers working over the summer. He suggested incorporating the Implementation Adjustment Worksheet into the report. Chair Roy said her intention is to craft a more robust version of the Implementation Adjustment Worksheet and insert that into the draft report. Price said that her organization is not unsympathetic to the many challenges, but the students cannot keep waiting. There was discussion on not deciding is deciding, hearing less from superintendents on the transition to the census block funding model than other aspects of Act 173, if this could be approached with a preface that Act 173 should be implemented but responsibly address the raised concerns, and implementing with adjustments.

### **Discussion/Vote – Review Draft Report to the General Assembly**

Chair Roy recapped that no action would be taken on a recommendation at this point, that included in the report to the General Assembly would be the issues identified, and further conversation will focus on what can be done to support implementation if it remains July 1, 2022. Chair Roy said SBE subcommittee meetings should be posted on the [SBE webpage](#), for anyone who is interested in attending.

Roy and Fannon expressed appreciation for Mahusky and her hard work on this AG. Mahusky thanked the group for the privilege of working with everyone. She will be transferring to another project at VLA and will be replaced on this AG by Rachel Seelig.

### **Adjourn**

Chair Roy adjourned the meeting at 11:42 a.m.