

**Report of the Census-Based  
Funding Advisory Group  
Act 173 of 2018, Sec. 9 (f)**

**REPORT**  
January 15, 2020

**Report to the House and Senate  
Committees on Education and the  
State Board of Education**

**Submitted by  
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## Background

### Act 173

[Act 173 of 2018](#): An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.

The Act changes the funding model for special education from a reimbursement model to a census-based model. This new model allows more flexibility in how funds can be used, simplifies administration of funds at both state and local levels, and aligns with policy priorities, including the opportunities identified in the District Management Group (DMG) report.

The act reinforces Vermont's commitment to comply with all provisions of the Individuals with Disabilities Education Act (IDEA) with an emphasis on maintaining state and local funding levels. Additionally, the act ensures that all students eligible for special education receive a free and appropriate education in the least restrictive environment in accordance with an Individualized Education Program (IEP).

### Charge of the Group

The Act created the Census-Based Funding Advisory Group “to consider and make recommendations on the implementation of a census based model of funding for students who require additional support.” Specifically, the Group is charged with the following:

- “[A]dvice the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;
- [A]dvice the Agency of Education and supervisory unions on the implementation of this act; and
- [R]ecommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.”

### Membership

The Act defines the membership of the Advisory Group as follows:

- The Executive Director of the Vermont Superintendents Association or designee;
- The Executive Director of the Vermont School Boards Association or designee;
- The Executive Director of the Vermont Council of Special Education Administrators or designee;
- The Executive Director of the Vermont Principals' Association or designee;
- The Executive Director of the Vermont Independent Schools Association or designee;
- The Executive Director of the Vermont-National Education Association or designee;
- The Secretary of Education or designee;

- One member selected by the Vermont-National Education Association who is a special education teacher;
- One member selected by the Vermont Association of School Business Officials;
- One member selected by the Vermont Legal Aid Disability Law Project;
- One member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;
- The Commissioner of the Vermont Department of Mental Health or designee;
- One member who represents an approved independent school selected by the Council of Independent Schools; and
- One member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

As of the writing of this report, the Advisory Group has convened 14 times (2018: September 14, October 12, December 3; 2019: January 7, February 4, March 4, April 1, May 6, July 24, September 16, October 7, November 4, December 11; 2020: January 6)

## **2<sup>nd</sup> Report #to the Committees on Education and State Board of Education**

### **Introduction**

The Group continues to recognize Act 173 as landmark legislation designed to improve the systems of support (and therefore outcomes) of struggling students in Vermont. The legislation addresses two essential components: high quality systems of support for struggling learners, and a funding structure for special education that allows flexibility to implement the former. Contrary to how some have referred to it, Act 173 is much more than a “special education funding overhaul.” In order to adequately implement the shifts in instruction to better meet the needs of all Vermont learners, Act 173 will require focused attention on the part of the entire educational system, including Superintendents, principals, curriculum directors, school board members and Agency staff in addition to special education directors. The stakeholders represented on the Advisory Group are here as partners in serving the needs of Vermont children. The Group is committed to implementation of the Act in a way that provides excellent educational opportunities for students.

The Group strives to reach consensus in its work and has been able to adopt unanimous recommendations regarding the draft rules to date, professional development recommendations and other recommendations for the SBE. In the event that consensus cannot be reached, it is the Group’s intention to inform the General Assembly regarding the areas of agreement and disagreement.

### **Advise the SBE on proposed rules**

Since February of 2019, the Advisory Group has been engaged in providing input and feedback to the Agency of Education regarding their draft rules. The AOE identified three “parts” of the Rules (Part B

Rules that address IDEA; special education funding; special education funding for independent schools) and opted for an approach that focused largely on a new Funding chapter (1300 series). The Advisory Group was then obliged to focus the majority of its input on the AOE's 1300 series drafts. Advisory Group discussions focused on providing input to the Agency in real time so that those concerns could be incorporated into subsequent Agency drafts.

The following is a timeline of key elements of the input process.

- **February, 2019:**
  - Agency presented initial draft outline of Rules
- **March, 2019:**
  - Agency provided first substantive draft Rules and requested individual written feedback
- **April, 2019:**
  - Agency heard full Advisory Group feedback on draft
  - Advisory Group began discussion of a recommendation for delay
- **May, 2019:**
  - Agency indicated they were not taking further Rule input; directed further input to State Board
- **July, 2019:**
  - Federal Education Group (FEG) Presentation (explanation below)
  - State Board of Education (SBE) asked for an Advisory Group response to the Agency draft, including recommended language changes
- **September & October, 2019:**
  - Advisory Group discussion of Disability Law Project (DLP) alternative draft rules and FEG additional input
  - October 16 presentation to SBE regarding Advisory Group recommendations for rulemaking (summarized below)
  - October work session with representatives from the Advisory Group, AOE, SBE and FEG to discuss the Advisory Group recommendations
- **November 2019:**
  - Agency presented their revised draft (informed by the work session) to the Advisory Group on November 4th and to the State Board on November 20th.
- **December 2019:**
  - Advisory Group presented draft Rules to SBE, based on their response to the AOE revised draft (explanation below regarding content).

### **Core issues identified by Advisory Group**

Informed by stakeholder input and the FEG report, the Advisory Group identified three main areas of concern regarding the Agency of Education drafts.

## **Definition of Special Education**

The AOE draft largely maintained the existing Vermont definition of special education that restricts special education services (and therefore allowable expenditures) to those services that are not provided within a school's typical system of supports

### ***Advisory Group Concerns:***

- Proposed definition is unnecessarily restrictive and conflicts with the Federal definition of special education
- Inclusion of the phrase "...that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system" imposes limits on the ability of an IEP team to select accommodations, strategies and specialized instruction that are allowable under the Federal definition, and may restrict the ability of a school to provide services in the Least Restrictive Environment

### ***Advisory Group Recommendation:***

Adopt the Federal definition of special education services, consistent with 34 C.F.R. 300.39

## **Inappropriate Conflation of Multiple Funding Constructs**

The AOE draft created a single set of expectations for how districts could use three different funding constructs (use of Federal funds, use of State funds, documentation of Maintenance of Effort). The draft applied the current VT definition of allowable costs (and reimbursable special education services) to documentation of MOE under the census-based funding model, therefore eliminating the flexibility intended under Act 173.

### ***Advisory Group Concerns:***

- Inappropriate connection made regarding the construct of what is reportable to demonstrate MOE, the allowable use of state & local funds, and what is allowable for IDEA-B funds
- Overapplication of what is allowable for IDEA-B funds to use of state & local special education funds, which effectively eliminates the flexibility stated under Act 173

### ***Advisory Group Recommendation:***

As part of the rulemaking process, seek external legal opinion regarding how to account for MOE, state & local spending and IDEA-B funds in a way that maintains alignment with Federal definitions of special education and provides flexibility intended under Act 173.

## **Cost Documentation Guidance**

The AOE draft rule defining special education and the subsequent draft guidance based on that rule impacted the extent to which approved, independent special education schools can be considered as allowable costs

### **Advisory Group Concerns:**

- Does not take into account the highly specialized delivery of general education in approved independent special education schools that are specifically designed to serve students eligible for special education or 504 services
- Impacts an IEP team's ability to determine the most appropriate placement and location for providing FAPE, potentially limiting a student's access to the full continuum of placements under IDEA
- Will result in significant impact to LEA general fund budgets for costs determined to be disallowed

### **Advisory Group Recommendation:**

Eliminate the proposed "test" for allowable expenditures, adopt flexibility permitted in federal rules, and ensure specifically that placement by an IEP team in an approved independent special education school is maintained as an allowable cost

In addition to those specific recommendations regarding the draft rules, the Advisory Group made a more global recommendation to the State Board that they secure all necessary support to assist in drafting subsequent versions of the Rules. Throughout the process to date, the SBE has relied heavily on the revisions proposed by the Advisory Group. While the Group appreciates the willingness of the Board to secure its input, it also recognizes that drafting Rules is beyond its scope as an Advisory Group and makes it challenging to adequately address its other responsibilities under the law.

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

Following the May Advisory Group meeting and as a result of concerns expressed regarding the AOE draft rules, the Education Organizations (VSA, VCSEA, VSBA, VPA and VT NEA) contracted with the Federal Education Group, a Washington-based firm that specializes in advising States on special education funding issues. The FEG was convened to inform the organizations regarding the alignment of the Agency's draft Rules with Federal law and the extent to which the draft Rules would provide the flexibility intended with Act 173. The Advisory Group heard a presentation from the FEG at the July meeting. The FEG report included the following recommendations:

- Amend the State's definition of "special education," as reflected in the State of Vermont Special Education Rules (adopted June 1, 2013), to be consistent with IDEA.
- Align State policies on the allowable uses of IDEA, Part B funds to federal definitions to help districts take advantage of Part B's full range of spending options.
- Permit districts to spend state funds on the full range of activities contemplated by Act 173, but also develop mechanisms to distinguish between MOE- and MFS-eligible versus ineligible spending.
- Exploring strategies for reducing administrative burdens associated with monitoring and oversight

[Report on IDEA, Part B Spending and Related Fiscal Rules and their Potential Implications for the State of Vermont's Act 173 Implementation by Federal Education Group, PLLC.](#)

## Revised Draft Rules

The Agency's November 2019 revised draft included revisions to the definition of special education that largely satisfied the Advisory Group's concerns on this issue. However, the revised draft did not fully address some of the Group's concerns regarding independent special education schools and stakeholder input for the development of guidance. As requested by the SBE, the Advisory Group [presented a revised draft of rules](#) at the December 18, 2019 meeting. At this meeting, the SBE took action on a motion supporting the recommendations of the Advisory Group and advising the AOE to take the recommendations into consideration.

At the January 2020 Advisory Group meeting, the Group had the opportunity to hear from the Agency in response to the draft. Their response was provided verbally, as they have not finalized their revised draft for the State Board. The following summarizes the reaction to the three major recommendations of the Advisory Group:

1. Definition of Special Education: The Agency concurred with the Advisory Group's recommendation to make technical corrections to the Federal citation in the definition of special education.
2. Stakeholder Input in the Development of Guidance: The Agency indicated that they agree in concept with the idea of gathering stakeholder input during their development of guidance. They will be proposing some revised, clarified language specifically outlining how the Agency will solicit input and how it will publicize the input received..
3. Allowability of Costs for Independent Special Education Schools: The Agency indicated that they oppose the Advisory Group's draft language regarding independent special education schools, as they believe it exceeds the Federal requirements and is already addressed elsewhere in their rules. The Agency asserts that costs associated with independent special education schools would be reflected in student IEPs and therefore remain as allowable costs. The initial reaction of the Advisory Group is that it remains concerned about the removal of their proposed language. They continue to believe that without this specific language, LEA's may be limited in what they can consider allowable, which would impact not only the calculation of Maintenance of Effort but also what costs would be eligible for extraordinary cost reimbursement (which would impact special education funding).

The Advisory Group intends to review the Agency's revised draft and provide additional input to the SBE. The Group would like to acknowledge that it is difficult to make a summary recommendation to the SBE without seeing their final proposed Rules.

## Areas of rulemaking identified for additional discussion

Because it is operating off of the Agency's proposed process of focusing heavily on the creation of a special education funding chapter (the 1300 series), the Advisory Group has not had an opportunity to fully discuss several additional Rule-related issues. The Group identifies the following as potential issues for consideration:

## **Special education funding for independent schools**

Early on in the rulemaking process, the Advisory Group acknowledged that significant work would need to be done to inform the development of Rules regarding the funding of special education for students attending independent schools. The Act prompts the Advisory Group to inform the General Assembly on any statutory changes it recommends in order to implement the law, "...including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act." The AOE has informed the Advisory Group that they intend to convene a stakeholder group to inform their drafting of independent school rules, and will engage with the Group with the results of that process. It is possible that the Advisory Group may come to the GA later this session with a recommendation as it continues through examination of draft independent school rules.

## **MTSS implementation**

Act 173 includes explicit requirements for both the Agency and school districts regarding the implementation of a multi-tiered system of supports. The Advisory Group recognizes MTSS implementation as critical to ensuring that schools can meet the needs of all struggling learners, not just those with identified disabilities. Act 173 speaks specifically to the development of policies, procedures and guidance governing MTSS implementation and specifies what elements need to be included in those documents.

At the January meeting, the Disability Law Project representative [requested that the Agency consider the addition of an MTSS Rule and provided draft language](#). The Advisory Group had a preliminary discussion of this proposal and agreed to discuss further in February. It has not adopted this language as part of its input to the SBE. The Agency has also indicated that they would share their perspective on this issue at subsequent meetings.

## **Additional 2360 series proposals**

Early on in the Rulemaking process, the Agency of Education recommended making technical corrections to the 2360 series of Rules, designed to bring the Rules into alignment with the funding changes outlined in Act 173. A draft of these changes was summarized and presented to the Advisory Group in April of 2019. At the time the Advisory Group had no concerns with the specific changes recommended in their draft.

Individual group members have raised questions regarding the Agency's approach of making only technical changes to the 2360 series. Among the issues identified by individual members are ChildFind responsibilities and Vermont's requirements to demonstrate Adverse Effect during the special education eligibility process. The Advisory Group has not made formal recommendations regarding these changes, and will have further discussion at future meetings.



## **Advise AOE and supervisory unions on implementation**

### **Professional Development:**

Although the priority work has focused on the development of Rules, the Advisory Group has had the opportunity to hear from and provide input to the Agency of Education regarding the professional development needs of school districts. Most recently, the Agency has shared an overarching [Framework document](#) outlining its approach to professional learning as well as the first in a series of sub documents

The Advisory Group has given significant input to the Agency regarding the need for high quality, long term and individualized professional development in order to implement the instructional components of 173. It has strongly urged the Agency to develop a comprehensive plan that:

- Is coordinated, well designed and consistent
- Includes a targeted approach to professional learning resources that will prioritize support to districts most in need of support based on identified metrics
- Includes financial support of existing Agency grants to support implementation. The CBFAG recommends setting aside IDEA funds for, at minimum, FY20, FY21, FY22 (extending current recommendation of FY19, F20, F21)

In October of 2019, a work session was convened by the VSA and VPA. The work session brought together a broad representative group, including administrators, teachers, special education directors, communication experts, family advocates and others. Included as an attachment, is a [summary of the work session](#) that was presented to the Advisory Group at their January 2020 meeting. It is included here because it captures a number of the recommendations that the Advisory Group had informally discussed over the course of the year. The Group intends to discuss and formalize its input in this area at subsequent meetings.

### **Recommendations to General Assembly for necessary Statutory changes**

The Advisory Group is required to make recommendations for any necessary statutory changes, including “any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.” The Advisory Group has identified a number of areas in which the GA should consider statutory changes. This report outlines those issues below, but in most cases stops short of making specific recommendations. It is the intention of the Advisory Group to return to the General Assembly with more specific recommendations later in the session, as the group has had more time to discuss.

### **Clarification of revised implementation timeline, including adjustment of Rules timeline**

When the general assembly enacted a delay in the implementation timeline for the transition to a census-grant model, it extended the transition to the census grant as well as delayed the development of Rules by one year. It was silent, however, on other issues related to the timeline (the length of time the AOE must set aside IDEA-B funds to support schools; the length of time the Advisory Group will

exist and the number of meetings it is approved to hold; independent school rules, etc). The Advisory Group recommends that the GA consider each of the timelines included in the Act and specifically address any changes that need to be made with those timelines.

### **Adjustments to the Uniform Base Amount/Census Grant Calculation**

At the January meeting, the Advisory Group heard a presentation by the lead author of the weighting study that was convened as part of Act 173. As the GA is aware, the information presented in the study is significant and complex. The Advisory Group focused their discussion on the interplay between the overall changes to equalized pupil calculations that were recommended and the specific changes that could be made to how the census-based grant is calculated.

The most significant finding in the study is the acknowledgement that a census-based funding model assumes that school districts have roughly similar rates of students with disabilities - and yet in Vermont, there is significant variability across districts, creating the potential for inequitable special education funding in schools. Dr. Kolbe also reminded the group that in fact we really don't know how this would play out until the model is implemented.

The Group determined that it would be inappropriate to move too quickly to make recommendations regarding the weighting study without careful consideration of all its complexity. The Group believes it is important for the GA to understand the importance of the information and move cautiously in making changes.

### **Hold on additional legislation**

The Group continues to agree that Act 173 represents landmark legislation for schools, and passage of additional education legislation will put implementation in jeopardy

### **Continued role of the Census-Based Funding Advisory Group**

The current legislation creates and supports the advisory group through FY22, related to the initial timeline. It is the opinion of the Advisory Group that its existence should match whatever revised timeline the GA enacts in its technical correction, so that the group is available to inform implementation as intended.

Submitted on behalf of the advisory group by:

Meagan Roy, Ed.D.

Chair

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Census Based Funding Advisory Group