

# **Census-Based Funding Advisory Group**

**Subtitle: Act 173 of 2008, Section 9**

**REPORT**

**January 18, 2022**

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

**Submitted by the  
Census-Based Funding Advisory Group,  
Megan Roy, Ed.D., Chair**



## Legislation

This report is submitted pursuant to [Act 173 of 2018 Sec. 9 \(f\)](#) to the House and Senate Committees on Education and the State Board of Education with “a status of implementation under this act and any recommendations for legislation.”

## Background

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 writing, the Advisory Group has convened 27 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, February 3, July 13, August 3, November 2, December 7; 2021: January 4, February 1, March 1, April 5, June 7, October 4, December 6, December 22). Per [Act 28 of 2021, Section 11](#), the Advisory Group shall cease to exist on June 30, 2023.

## **Report No. 4 to the Committees on Education and the State Board of Education (SBE)**

### **Introduction**

The Census-Based Funding Advisory Group has continued its work throughout this unprecedented time in education. As school districts navigate the process of simultaneously responding to and recovering from the ongoing pandemic, the Group continues to recognize that the educational structures of Multi-Tiered Systems of Support (MTSS) required under Act 173 are critical to improving outcomes for struggling students in Vermont.

As the General Assembly is aware, the implementation of Act 173 has been delayed twice, both times because of a recognition of the significant work needed in Vermont districts in order to adequately implement the shifts in instruction to better meet the needs of all Vermont learners. While the Advisory Group unequivocally believes that Act 173 is critical for the development of robust and equitable educational support systems in our schools, we are also keenly aware of the implementation challenges that continue to plague districts across the state. As a result, the Group has discussed at length the implications of further delay. These discussions are summarized below.

The Advisory Group strives to reach consensus in its work. 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**

### **Rule Series 1300/2360 (Special Education Funding & Programmatic Rules)**

The Advisory Group's work on the Rules Series 1300/2360 have been addressed in previous reports at length. Those rules have gone through the rulemaking process and stand to go into effect on July 1, 2022. The Advisory Group has not spent time specifically on these Rules; however, they have discussed them as part of the conversations about implementation timeline. The Advisory Group recognizes that an adjustment to the implementation timeline would come through action of the General Assembly and not the State Board; therefore, discussion about the Rules Series 1300/2360 is summarized below, with the more comprehensive summary of issues related to Act 173 delay.

### **2200 Series (Independent Schools)**

As described in the [2021 Report to the Education Committees and State Board of Education](#), during the 20-21 school year the Advisory Group participated in a series of stakeholder meetings convened by the Agency of Education to inform the development of the Rules Series 2200 draft rules. The stakeholder group discussed a number of issues associated with the rule development, but in particular focused on two areas: 1) Ensuring that enrollment practices for independent schools that accept public dollars are non-discriminatory, particularly as it pertains to disability; and 2) Ensuring sufficient transparency around the rate setting process for independent therapeutic schools so that there are assurances that public special education dollars are being spent prudently. Ultimately, the Advisory Group **endorsed** the draft Rules that were informed by the stakeholder group and later opened for public comment during the 2021-2022 school year.

In late November of 2021, a number of public comments were submitted to the State Board that related to the same two primary issues of importance to the Advisory Group (non-discriminatory enrollment practices and rate setting for therapeutic schools). The State Board's subcommittee on the Rules Series 2200 asked that the Advisory Group discuss whether they would recommend changes to the SBE's current draft in light of the public comments, even though the Group had endorsed the existing draft language and believed it adequately addressed the language in Act 173. The Advisory Group noted that because the same two issues were again raised during public comment it would be prudent to consider the comments and determine whether adjustments to the language would be recommended.

As a result of a lengthy discussion and consideration of the public comment, the Advisory Group reported to the State Board that it believed the language in the currently proposed rules could be improved for clarity around certain issues raised during public comment. The Group requested an opportunity to come forth with specific recommendations for language changes. As of the publication of this report, the Advisory Group does not have language change

recommendations; however, the following is a summary of the issues discussed (these were also shared with the SBE subcommittee):

### **Non-discriminatory Enrollment Practices**

*(2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School):* A number of public comments centered around ensuring that independent schools who accept public dollars enroll students on a first-come, first-served basis regardless of disability status. The comments questioned whether 2229.4.1(a) ensured equal access to space at an independent school, because of the language “[T]o “enroll” a student means that an approved independent school will offer a position in the school to a student, provided that the provisions of this subsection relating to LEA responsibilities are met and the student meets the other requirements of the school’s enrollment policies [emphasis added].”

Although the Advisory Group felt, in its initial support, that this language did adequately signal nondiscriminatory enrollment procedures, the issue was important enough that it was willing to entertain clarifying language regarding “other requirements of the school’s enrollment policies.” However, as of the writing of this report there was not consensus agreement on alternative language. **The Advisory Group did affirm its full consensus support for ensuring that the Rules Series 2200 require nondiscriminatory enrollment practices, and that students with disabilities are not prevented from enrolling in independent schools accepting public dollars solely on the basis of disability.**

### **Financial Transparency and Accountability**

*(2232 Rate Approval for Therapeutic Approved Independent Schools):* Public comments also raised concerns about the need for financial transparency and accountability as it relates to rate setting for therapeutic independent schools. The comments suggested that the current draft rules did not provide sufficient accountability to the Agency of Education for reporting of financial costs, and that this lack of accountability puts LEAs and taxpayers at risk of supporting costs that are not fully associated with providing services to students.

While the Advisory Group did have a lengthy discussion about these concerns, **it did not recommend changes to Rule 2232.** In making these determinations it relied heavily on the perspective of Agency of Education staff, who reported that the current draft rule requirements provide appropriate transparency, and that additional reporting would be burdensome to independent schools and was not required to satisfy their accountability needs.

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

#### **Professional Development for MTSS and Associated Rule Changes:**

The Advisory Group continues to have significant concerns about the magnitude of implementation impact for LEAs related to Act 173. In addition to the MTSS implementation that has been discussed at length, the passage of the Rules Series 2360 Rules has created two additional and significant changes that school districts are required to implement. Guidance for implementation of the rule changes has only been partially released as of the publication of this report, leaving less than six months for school districts to adequately train their special

education and general education staff. While a full technical description of how the rule changes impact schools is beyond the scope of this report, it is clear to the Advisory Group that the changes only magnified the challenges school districts are facing regarding implementation - all during a time when schools are critically understaffed and still reacting to the ongoing impacts of COVID-19.

The Agency of Education has released a timeline of guidance documents and pre-recorded webinars to the field, focused on what they identify as the critical elements of the rule changes. These guidance documents focus almost entirely on the rule changes, as opposed to the broader systemic implementation of MTSS that is required under Act 173. It is the opinion of the Advisory Group that a much broader and deeper understanding of the MTSS implementation will be required for successful implementation of the Act. The Group has continued to express its concern with what it believes is a lack of adequate, targeted support for LEAs related to MTSS. This has now been magnified by the additional requirement to be prepared to implement the rule changes, most of which were not directly related to Act 173.

### **Recommendations to General Assembly for Necessary Statutory Changes**

The Advisory Group is required to make recommendations for any necessary statutory changes to the Act. Currently, the primary issue that the Advisory Group has been asked to address is the issue of the implementation timeline (Act 173 is slated to go into effect on July 1, 2022). At the time of this report, the Group did not have a formal recommendation for the General Assembly to consider. Below is a summary of the major issues related to implementation timeline. The Advisory Group believes strongly that the General Assembly should be aware of the following issues and reserves the right to submit additional recommendations during the legislative session.

#### **Implementation Timeline Changes**

As has been made clear in each report to the General Assembly, it continues to be the firm belief of the Advisory Group that Act 173 represents the most significant education legislation to be passed in Vermont's recent past. **Unequivocally, this Group believes that Act 173 is critical legislation that needs to be enacted to have a positive impact on Vermont's struggling learners.** Over the three years of this group's existence, however, we have continually articulated the magnitude of change the Act requires of LEAs and the deep and comprehensive professional development required of systems for successful implementation. We have often given very targeted and specific feedback to the Agency about professional development and have often expressed our concerns that the professional development being framed by the Agency is incomplete and insufficient for implementation. As a result, the Advisory Group supported the two delays in implementation that were enacted by the General Assembly, with the expectation that additional time would allow the Agency to more effectively identify and support those LEAs most in need of implementation help.

As the state approaches the third year of the pandemic, we again find ourselves facing the implementation date of Act 173; this time, in the midst of unprecedented impacts on schools. The ongoing situational impacts of COVID-19 combined with the related and crippling

workforce shortages make it extremely difficult for LEAs to move forward the work necessary for them to be prepared for implementation.

With this reality in mind, the Advisory Group convened a working session in late December to attempt to surface a number of options related to the implementation timeline and identify advantages and disadvantages of each. At our January meeting, the group continued this discussion to determine whether a consensus recommendation could be reached. It also had an opportunity to hear from the Agency of Education about the status of their own position on the issue of timeline. Secretary French indicated that the Agency was hoping to benefit from the voice of the Advisory Group to inform its official position, which it expects to have in early February.

Ultimately the Advisory Group did not take action on a formal recommendation. However, the following is a summary of various options that were contemplated and our identification of the advantages and disadvantages of each option. The General Assembly should understand that these are not presented in any sort of order, and the Group is not identifying any one option as being more viable; this is simply an attempt to surface the issues discussed.

## Potential Options for Legislative Action

<b>Option: No Delay</b> <i>Act 173 and all associated rule changes go into effect July 1, 2022</i>	
Advantages	Disadvantages
<p>Act 173 and its original intentions were supported by VSA, VSBA, VCSEA, VT-NEA and VPA as well as the advocacy communities. The reasons for this support haven't changed.</p> <p>Some districts are ready for implementation (though there is acknowledgement that this may be the minority).</p> <p>There is a recognition that MTSS has been part of legislation for some time, but there are accountability measures in Act 173 that are needed in order to cause implementation of MTSS.</p> <p>Some groups, particularly in the advocacy community, believe that a delay in the 2360 Rule changes would have significant impact on students with disabilities.</p>	<p>The reality is that some systems simply won't be able to implement the tenets of the law on July 1.</p> <p>Regardless of the implementation challenges that existed before the pandemic, staffing shortages and capacity of LEAs has been impacted by COVID-19. These impact staff's ability to participate in the PD needed to implement the law.</p> <p>The existing timeline risks poor implementation, impacting the strength of the desired policy changes. This may produce more damage than moving forward in a more thoughtful, measured way.</p> <p>Professional development has been an ongoing challenge identified by this Advisory Group and arguably has not been adequately supported/facilitated.</p>
<b>Option: No Delay in Act 173; delay in 2360 rule changes not associated with Act 173</b> <i>Act 173 (MTSS and census grant) go into effect on July 1. Rule changes not associated with Act 173 (adverse effect and SLD identification) are delayed by one year</i>	
Advantages	Disadvantages
<p>LEAs feel these rule changes have become the "one more thing" that came on top of the challenges of 173. If the rest of the law went into place and these changes were delayed, it would give more time to put those into place while preserving the welcome changes to funding and MTSS.</p>	<p>Advocacy community likely would not support this.</p> <p>Main issues at this point are situational - related to COVID-19 - and are different than the systemic challenges regarding lack of MTSS implementation.</p>



**Option: Change to a Census Grant delayed but programmatic changes go into place**

Advantages	Disadvantages
<p>There hasn't been enough discussion of the interplay between the pupil weighting changes and the shift to a census block - so delaying the financial implementation would allow for this discussion.</p>	<p>The Census grant impact that is of concern for some districts is beneficial for others - so possibly this would only shift the financial impact.</p> <p>Budgets are likely being built with the changes as they exist currently - so a change could be a challenge to budget building.</p> <p>The yield and the education fund surplus could be a bridge to adjust to the new financial model and therefore now is a good time to implement (not delay).</p>

**Option: No implementation date change but a formal recommendation about professional development**

*Advisory Group would make a more formal recommendation to the General Assembly to charge the Agency with identifying districts most in need of implementation support and providing targeted support to those districts*

Advantages	Disadvantages
<p>This would allow the policy to be enacted for all the reasons noted above but would acknowledge those systems who need support and would provide it.</p> <p>ESSER/recovery funds provide ample funding to support targeted professional development.</p>	<p>Doesn't eliminate the situational challenges everyone is experiencing, including those more prepared to implement pre-COVID-19.</p>

Again, the Group acknowledges that it may approach the General Assembly later in the session with a more formal recommendation.

Submitted on behalf of the Advisory Group by:

Meagan Roy, Ed.D.

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Chair, Census-Based Funding Advisory Group