



VERMONT STATE BOARD OF EDUCATION  
Friday, July 29, 2016  
219 North Main Street  
Barre, Vermont 05641

**July 29, 2016**

*Strategic Goals: (1) Ensure that Vermont's public education system operates within the framework of high expectations for every learner and ensure that there is equity in opportunity for all.  
(2) Ensure that the public education system is stable, efficient, and responsive to changes and ever-changing population needs, economic and 21st century issues.*

### MINUTES

#### **Present**

**State Board of Education (SBE):** Stephan Morse, Chair; Sean-Marie Oller, Vice Chair; Peter Peltz; William Mathis; Mark Perrin; Bonnie Johnson-Aten; Rainbow Chen (via conference call) Student Member; Connor Solimano, Student member non-voting.

**Agency of Education (AOE):** Rebecca Holcombe, Clare O'Shaughnessy, Judy Cutler, Donna Russo Savage, Haley Dover, Amy Fowler, Maureen Gaidys.

**Others:** Christopher Leopold, Wells and Leopold; Nikki Smith, Wells and Leopold; David Chabot, Vermont School for Girls (VSG); Jeff Caron, Vermont School for Girls (VSG); Mill Moore, VT Independent Schools Association; Nicole Mace, VSBA; Jeffrey Francis, VSA; Jonathan Wolff, Primmer/Lyndon Institute; Tiffany Pache, VTDigger; Laura Pelosi, SSA/BBA; Clare Buckley, KSE Partners on behalf of VISA; Mary Collins, VT HITEC.

#### **Item A: Call to Order**

Chairman Morse called the meeting to order at 9:40 a.m. He announced that Board member Krista Huling was not present and that her absence is excused – she delivered a daughter on Monday. Congratulations were extended to Huling and her family.

#### **Item B: Public to be Heard**

David Chabot, director of legal affairs for Becket Family Services, an affiliated group that consists of several corporations, one of which is Vermont Permanency Initiative, Inc. (VPI), the operator of Vermont School for Girls. He introduced Jeff Caron, President of VPI who respectfully requested that the Board not act prematurely and give VSG an opportunity to be heard.

Mathis suggested that Chabot and Caron be heard from in a separate executive session.

Chairman Morse announced that should the motion to go into executive session pass, the Board would first hear from the AOE, and then invite in other parties who might have thoughts and information to share, prior to making a decision in open session.

There were no other members of the public to be heard.

**Item C: Consent Agenda**

**Motion:** Vice Chair Oller moved to approve the consent agenda as presented. The motion was seconded by Perrin.

**Vote:** The vote passed unanimously.

Specifically, the items approved were: Item C – Consent Agenda

1. Minutes – June 20, 2016 SBE Retreat
2. Minutes – June 21, 2016 SBE Meeting

**Item D: Board Members Announcements and Student Representatives Emails**

Chen announced that she has voting privileges now as she moves into the role of voting student member. She apologized for being absent and explained that she was in Little Rock, Arkansas for the Noble Educators Summit, a professional development conference. She shared that Vermont has gotten a huge reputation boost at the conference for the work we are doing and for its commitment to student voice on the State Board of Education. Chen added that earlier in the month, she and Solimano were invited by Up for Learning to attend an international seminar. This was an incredible conference and a wonderful learning experience. She added that we are in good hands with Solimano.

Mathis shared that he, Chairman Morse, and Perrin met with the Scott Thomas, the new dean of Education and Social Services at UVM. It was a delightful visit and he really wants to reach out and work with schools and believes that there is a lot we can do with research and school improvement work. Chairman Morse acknowledged that this is the first time that the UVM has reached out to the SBE and found this very welcoming. Secretary Holcombe added that UVM also reached out to her when hiring for this position, and she was extremely impressed by Dr. Thomas.

**Item E: Chair's Report**

Chairman Morse welcomed and congratulated Solimano on his position as the new student representative to the Board and asked him to give some brief background on himself. Solimano shared that is he very excited to be part of the Board - he is a rising junior at Rutland High School, is very involved in community and school, serves as the class secretary, the elected student school board representative, and participates in year round sports (cross-country, indoor track and tennis) and community service. Secretary Holcombe added that his reference checks were amazing and that no one could say enough good about him.

Chen excused herself from the meeting so that she could participate in her conference.

**Item F: Secretary's Report**

Secretary Holcombe announced that this would be the last meeting with in-house videography. The delay is partly due to the procurement process - there was an RFP and bidding process. A decision has been made and the new vendor will be announced at the next Board meeting.

Secretary Holcombe distributed a document that showed the parallel processes between the EQS and ESSA conversations and the elements of state accountability/state goals board decisions and how they shape the work on federal goals. AOE is trying to systematically work from SBE decisions towards federal plans, to the extent possible.

Peltz asked if we were still on hold with state initiatives. Secretary Holcombe stated that we stopped doing the last pilot of the Field Reviews, due to a need to reassess work with the passage of ESSA, but will resume the Integrated Field Reviews this fall. She noted also that the AOE took time to reorganize some of its work groups around the Board's Education Quality Standards.

AOE has also been focused on reviewing ESSA draft regulations and providing formal feedback to the U.S. Department of Education prior to the deadline of August 1, 2016.

**Item: G – Committee Reports**

There were no committee reports.

**Motion:** Mathis moved to discuss the status of VSG in executive session; this was seconded by Peltz.

Before a vote was taken, Chairman Morse shared the procedural matters for this executive session: there would be a 5-minute break, following which the Board will hear what is presented by the Secretary's Office, then representatives from VSG will be invited to speak.

Chairman Morse asked if there were any further points of view for presentation during executive session. Ken Schatz, Commissioner for DCF, introduced himself and stated that he too, has regulatory authority over VSG.

Chairman Morse stated that the Board will hear from the Agency, then Schatz, then VSG representatives. This will all be in executive session and each party will be invited and heard separately.

**Vote:** The vote passed unanimously. A five minute break was called before going into executive session

**Item X: Executive Session**

The Board entered Executive session at 10:06 a.m.

At 11:27 a.m., Chairman Morse called the Board to order and they resumed their regular Board meeting.

### **Item Z: Vermont School for Girls**

**Motion:** Johnson-Aten moved that the State Board approve the said letter to Vermont School for Girls and authorize the Chair to sign and send such letter. This motion was seconded by Mathis.

Discussion: Oller announced that she would be abstaining from voting on this motion because she lives and works in the community of Bennington, and while there is no perceived conflict of interest, she feels that abstention is appropriate. Chairman Morse called a roll-call vote.

**Roll Call Vote:** Yea - Perrin, Peltz, Mathis, Johnson-Aten, Morse; Nay - None. Oller abstained from the vote. The motion passed unanimously and this letter will be signed and mailed today.

Chairman Morse advised that there is one typo in the draft letter that needs to be corrected. He suggested that since Caron and Chabot had travelled to be present that they might be interested in seeing the letter. Chairman Morse asked that O'Shaughnessy provide a copy of the draft letter to these interested parties from VSG and follow-up later with the corrected, signed version.

### **Item H: Act 46 Update - Draft guidance for alternative structures and mergers – Donna Russo-Savage**

Russo-Savage noted that [draft guidance for alternative structures and mergers](#) should have been received by Board members and she walked them through her Power Point presentation.

Highlights from the presentation:

The deadline for proposed accelerated mergers has passed. Over the next two or so years, the Board can expect to be dealing with the second and third phase of incentivized merger proposals. There is also a requirement that districts that are not merging into a preferred structure self-evaluate, meet with other districts in the region and submit a proposal that accommodates their diversity of district structures. Finally, there is a requirement that by November 30, 2018, the State Board issues a statewide plan that merges or clusters distinct district structures together to have a seamless governance structure.

Although Act 46 acknowledges alternate structures, the only place that it indicates that they are reviewed or considered is in the creation of a statewide plan. There is not a separate process.

At the annual retreat, the Board focused on similar issues and determined that although Act 46 contemplates this, it doesn't provide much guidance. The Board requested that the Agency draft both rules and guidance for alternate structures and a guidance document for mergers going forward. Guidance document is based on what information is available in Act 46 and the analysis and discussion from the Board retreat.

Russo-Savage walked through the guidance document.

It is important to note that under merger law there is a creation of a separate study committee. Page 3 (of the guidance document) acknowledges that not all merger discussions will lead to successful mergers, but that there might be a lot of information collected and analysis completed during the discussion of a potential merger that might subsequently inform a proposal for an alternate structure.

Act 46 only considers alternative structures in the creation of the statewide plan.

Also important at the top of page 4: There is nothing in Vermont law or otherwise that would require the Board to incorporate these proposals. The Board can consider alternative structure proposals and decide on something else that makes more sense in the creation of the statewide plan.

Page 4 likely has the strongest statement, "Act 46 also provides: The State Board shall approve the creation, expansion, or continuation of a supervisory union *only if the Board concludes* that this *alternative structure: (1) is the best means of meeting the [Goals] in a particular region;*"

There is some overlap on pages 6-9; this is so that concerns raised could be addressed at different angles. These points cumulatively suggest that the burden to prove that any alternative structure proposal has been carefully vetted and the rationale substantiated is on the school boards, not on the State Board.

Chairman Morse clarified that the Board was being asked to approve this draft guidance. Russo-Savage responded that the hope was that the guidance would be approved if it captured what was requested by the Board. If so approved, the Agency would come back with proposed rules in August. Chairman Morse asked what the time line would be and if the rules statute would fall within the statutory timelines, and received an affirmative response.

Peltz commented on the work that was put into this and noted that it is new ground and the guidelines will be very helpful in moving this along and gaining efficiencies. He questioned the \$5K for study grants and asked for clarification that unless you are forming a union, the \$20K cannot be accessed. Russo-Savage asked to get back to him on that. Peltz said there's a lot of work to be done and not a lot of funding for this. Russo-Savage reiterated that a lot of this work could be done by the study committee. He asked about small schools grant and expressed concern that there is a very tight timeline; Russo-Savage acknowledged that this is why this guidance and rulemaking on small school grants is being requested in advance by the Board, so that it could be shared with districts in a timely way.

Mathis stated that the guidance is very faithful to what the Board wanted and the sooner it gets out, the better. He questioned page 4, letter D (of the guidance document) at the top where it says, "*Nothing in Vermont law requires the Board to incorporate a non-merging district's proposal into the final statewide plan. Similarly, nothing requires that an alternative structure included within the final statewide plan is the same as a proposal presented by a non-merging district or group of districts...*" and asked for clarification that if there was a plan that leaves an orphan, the Board can change that.

Russo-Savage said that was correct but, the Board is not going to be reacting to these proposals before preparing a statewide plan. Mathis said this is a potential problem because reversing a decision would be a problem. He asked if the Board could still change the boundaries if an unfortunate situation arose. Russo-Savage said that under this structure, the Board would have total authority to change supervisory boundaries pursuant to long-standing statutory law, and could after the fact, redraw the supervisory boundaries.

Peltz noted that the Board needs to look at this from the statewide perspective which the local districts might not have.

Mathis had a second point on page 9, number 11 of the guidance document where it reads: In what ways does the proposal demonstrate that a preferred, unified system “may not be possible or the best model to achieve” the Goals in the region <sup>1</sup> (*i.e.*, that “it is not possible or practicable” to merge some or all of the included district(s), where necessary, into a preferred, unified structure while also adhering to the protections for tuition-paying and operating districts; or otherwise meeting all aspects of the preferred, unified system <sup>2</sup>)?

He would like the placement of that to be more prominent. It was agreed that its placement would stay and that Mathis would be content to have it bolded. On page 10 of the guidance document, under 261(b), the voting requirement – Mathis asked if this could this be spelled out since he was worried that people wouldn’t know what “261 (b)” means.

Russo-Savage noted that is guidance, and that the rules will get into the data and what the districts have access to. The next step for her is to speak with the data folks at the Agency.

Nicole Mace, VSBA introduced herself. Mace thanked the Board for their leadership and the Agency for their work of putting this into writing and aligning the guidance and Act 46 and the previous conversation of the Board. There is a lot being expected of local school boards – it puts the burden on these school boards and this sets the bar high. She said that her hope is that the AOE will be able to provide the data, specifically data related to EQS, that is needed to evaluate – and that if this could be available very soon, that would be helpful. The VSBA plans to use their regional meetings this fall to get feedback from members on the draft rules so that Board can collect good feedback from the VSBA.

Chairman Morse offered the Board’s help in collecting feedback. Johnson-Aten stated that she appreciates that the bar is set very high – and she agreed that alternative structures should be the exception. Mathis asked what criteria and numbers would be used in the rules. He does not want the Board to be too tightly limited and not adaptable to other situations. Russo-Savage anticipates that the Board will be looking at the entire picture.

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<sup>1</sup> Sec. 5(c)

<sup>2</sup> Sec. 10(a)

**Motion:** Chairman Morse reiterated Peltz's motion that the Board accept the Agency draft of guidance proposal for one or more non-merging districts for alternative structure under Act 46 with the two minor changes suggested by the Board. Oller seconded this motion.

**Vote:** This motion passed unanimously.

**Item I: Post-Secondary Rules Update – Draft – Clare O'Shaughnessy**

O'Shaughnessy shared that the Board is being asked to authorize the Agency on the Board's behalf to present the proposed rule changes for post-secondary rules to LCAR. The period for public comment ended on June 27, 2016. There was no public comment or attendance at the scheduled public hearing. Chairman Morse asked for a motion. Oller moved, this was seconded by Johnson-Aten.

Mathis asked for a summary of changes. The main changes are that post-secondary institutions applying for approval to operate in Vermont will be required to undergo NEASC accreditation. There are no pending applications. Other than that it is updating antiquated language (Commissioner to Secretary). The statutory fees are incorporated into the rules and the Agency no longer conducts the reviews. There are no pending applications.

Mathis asked if there were periodic reviews for accreditation. O'Shaughnessy reported that this did not change and that when the Board grants degree or credit-bearing approval to an institution, the initial period is not to exceed 5 years or whatever terms and conditions the Board may set.

Chairman Morse asked about consistency. He cited 2241.3 – where it states “filing an application within 18 months of admitting the first student.” He then cited 2242.2 where it says “file an application prior to admitting students.” He asked if these were two different things – and if this was consistent.

Chairman Morse suggested a lunch recess and that O'Shaughnessy could review the two sections and report back on this query after lunch.

Mathis asked for a list of institutions affected, if available.

Chairman Morse called a recess for lunch at 12:08 p.m. He announced that the regular Board meeting would reconvene at 12:45 p.m.

Chairman Morse reconvened the regular Board meeting at 12:47 p.m.

O'Shaughnessy explained that the difference in the two sections and apparent inconsistency had to do with whether or not the applicant institution was operating in Vermont or an out-of-state institution. The rule permits 18 months to an in-state institution so as to not discourage a business from operating in Vermont.

O'Shaughnessy reported that the rule would have affected the Center for Cartoon Studies (degree granting) and an on-line based school, Oplerno (credit bearing) and that both are grandfathered and allowed to carry on as usual. Both entities can remain status quo under the rule changes. AOE reached out to Oplerno regarding the rule change and received no comment.

**Motion:** Chairman Morse reiterated the motion by Oller that was seconded by Johnson-Aten, to accept agenda item I and authorize the Agency on the Board's behalf to present the proposed rule changes for post-secondary rules to LCAR.

**Vote:** This motion passed unanimously.

### **Item J: Rules Update – Independent Schools – Clare O'Shaughnessy**

O'Shaughnessy noted that the Board has received an extensive packet of information and proposed revisions. The Board tasked the Agency in November 2015 to engage in a comprehensive review of independent school rules and proposed revisions to those rules. The Board also asked for a proposed timeline and in December the Agency presented the Board with a proposed timeline for the adoption of proposed rules. If the Board votes to go forth with proposed rules and presuming that rules can get before ICAR in August, the first public hearing would be no sooner than September 30, 2016. The Agency proposes to have no less than 3 public hearings on the proposed revision to the rules with a view towards doing that regionally – northern, central and southern parts of the state. At a rapid pace, those meetings could be convened and completed in October. The rules cannot go to LCAR until 7 days after the close of the public comment period. At best, we would be looking at a November date to return to the Board to go to LCAR in December.

Chairman Morse noted that we are at the very beginning of the process and was not sure that folks need to feel the need to give public comment today as there will be ample opportunity for that. He was hopeful that there would be no major conversation today, but it was agreed that the Board would hear from Mill Moore.

Mill Moore introduced himself. He shared that he had written a letter on behalf of his association to Chairman Morse and wanted to place this letter on the public record. His letter can be found here: <http://education.vermont.gov/documents/edu-sbe-moore-letter-item-j-072816.pdf>.

He requested that the Board not move to a vote on the Board's July 29 meeting on item J, independent school rules proposals prepared by the Agency of Education. This request if made for two reasons: 1) of evidence of likely rule implementation problems and 2) questions about the enforceability. Because of these problems and concerns it was respectfully requested that the Board defer action until all interested parties are fully prepared. It was also requested that Board set a process for the Agency, the Board and the independent schools community to have a dialogue about policy goals and implementation procedures.

Chairman Morse noted that Mill referenced the use of the word "I". Moore stated that this reflects his association's position. Morse asked if it was approved by his Board of Directors. Moore said yes.

There were no other questions or comments.

**Motion:** Oller moved to authorize the Agency of Education to pre-file the proposed revised amendment of state rule series 2200, section 2230.4, private education programs including distance learning schools, correction education tutorial programs and private kindergarten programs, and rule 7000 series, rule 7320 only, with ICAR for review by ICAR to begin the administrative rulemaking process. This was seconded by Johnson-Aten.

Discussion: Oller asked if there were comments or questions from the Board, if there could be a process between now and November to have the Agency reflect on these questions. Secretary Holcombe offered to have the Agency put together a proposal for a process, submit it to Chairman Morse to review and act based on that to make sure that there are opportunities beyond what is in the statutorily defined process for the Board to process and hear feedback. Chairman stated that we would need to be cautious to not interfere with the rulemaking process.

Mathis concurred with Oller's remarks. Mathis asked Moore to explain offline the religious and court decision piece and why he thinks this violates Title IV.

Chairman Morse called a roll call vote.

**Roll Call Vote:** Yea - Oller, Johnson-Aten, Mathis, Peltz, Perrin, Morse; Nay - None. The motion passed unanimously. The independent school rulemaking process has been initiated.

**Item K: Burlington College Records - Clare O'Shaughnessy**

Chairman Morse noted that there was new information on this particular issue and that there might be a need for executive session.

**Motion:** Oller moved to go into executive session for the purpose of having confidential communications with the Attorney General's office on legal matters pursuant to V.S.A. § 313 (a)(1)(f). Johnson-Aten seconded.

**Vote:** The motion passed unanimously.

Chairman Morse called the Board into executive session at 1:00 p.m.

Chairman Morse reconvened the regular Board meeting at 1:33 p.m.

Chairman Morse announced that Burlington College has closed and under section 16 V.S.A. 175, the Board has the responsibility for maintaining the academic records for students who attended this college. There have been some issues figuring out the proper repository for those

records. The Board has been assisted by the Attorney General's office and hopes today to come to some resolution on this.

**Motion:** Oller moved to have the Board vote to authorize the Agency to take temporary possession of Burlington College's academic records and certain other records until a permanent repository is appointed, to ensure the proper storage, availability and disposition of these records in accordance with all legal requirements, and further that the Board vote to authorize the Agency to allow other entities to have access to a student's records consistent with all legal requirements, when allowing access is in the best interests of that student.

Peltz seconded the motion. Chairman Morse asked if there was any further discussion. Oller thanked the legal department and the Agency for trying to work out the details in this matter. Morse noted for the record that once again the Agency is being called upon to provide an additional service that is not being funded by the state of Vermont so there is even more budget pressure for the Agency. Chairman Morse called a roll call vote.

**Roll Call Vote:** Yea - Oller, Johnson-Aten, Mathis, Peltz, Perrin, Morse; Nay - None. The motion passed unanimously.

#### **Item L: ESSA**

Chairman Morse asked Mathis to lead the discussion on two items: Board guidance to the state on ESSA and the Board letter to Secretary King regarding ESSA. Mathis shared that these two items were discussed this last month and a couple of drafts have been circulated since then and they are likely ready for action.

**Motion:** Oller moved to accept both letters of the Board in item L, one to the education community and one to Secretary King regarding ESSA; the motion was seconded by Perrin.

**Vote:** The motion passed unanimously.

Secretary Holcombe verified that the Agency would submit the letter to King and send it on the Board's behalf and also submit it through the online collector. The Agency will also format the guidance letter and send it to the field and education partners.

The timing of the letter to the field was discussed. Oller suggested waiting until mid-August so that all would have it. Secretary Holcombe suggested sending it earlier and no later than mid-August since beginning of year packets would already be prepared.

Mathis complimented Haley Dover on the news clips that she sends to the Board as he finds them very helpful and feels that they serve a valuable function.

Chairman Morse noted that the financial report shows a surplus of \$20K for the Board last year.

Chairman Morse acknowledged that this had been a pretty incredible meeting and that a lot of important topics were covered and that everyone's contributions were appreciated. He offered that he expected a lot of media coverage and reminded the group that they had two executive

sessions and that those conversations are not allowable for further discussion with anyone. He further offered a general comment that in dealing with the media the offering of 9 different opinions is not that helpful. Board meetings are very open and the hope is that people would use the meetings as a format instead of the media.

Oller confirmed that the next meeting is August 23, due to Bennington Battle Day – and then September 20, October 18, November 15 and December 20. Secretary Holcombe confirmed that the August meeting is here in Barre and the September meeting will be at St. Johnsbury Academy.

Chairman Morse noted that the Board photo needs to be updated for the web. The Agency will coordinate to have a new photo taken at the next Board meeting.

Chairman Morse asked if there was any further discussion. There was none.

**Motion:** Peltz moved to adjourn the Board’s July meeting. Oller seconded this motion.

**Vote:** The motion to adjourn passed unanimously. The meeting adjourned at 1:44 p.m.

Minutes recorded and prepared by Maureen Gaidys

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