
Act 173 Advisory Group Special Meeting

Approved Meeting Minutes

Meeting Place: Skype Conference Call
Call in Number: (802) 552-8456
Conference Room Number: 185244047#

Date: December 11, 2019

Present:

Advisory Group Members: Meagan Roy, Vermont Council of Special Education Administrators (VCSEA); Marilyn Mahusky, Disability Law Project/Vermont Legal Aid (DLP/VLA); Peter Garrecht (VCSEA-selected special educator); Jeff Francis, Vermont Superintendents Association; Marianna Donnally, Department of Mental Health (DMH) (representing Cheryle Wilcox, DMH); Karen Price, VT Coalition of Disability Rights; Mill Moore, Vermont Independent Schools Association (VISA); Jay Nichols, Vermont Principals' Association (VPA); and Sue Ceglowski, Vermont School Boards Association (VSBA).

Agency of Education (AOE): Emily Simmons, Judy Cutler, Maureen Gaidys.

Others: Traci Sawyers, Vermont Council of Special Education Administrators (VCSEA); Susan Aranoff, Vermont Developmental Disabilities Council.

Call to Order/Roll Call/Introductions/Amendments to Agenda

Chair Roy called the meeting to order at 8:19 a.m. and read roll call based on who identified themselves on the phone: Marianna Donnally, Sue Ceglowski, Jeff Francis, Peter Garrecht, Marilyn Mahusky, Mill Moore, Jay Nichols, Karen Price, Meagan Roy, Emily Simmons, Judy Cutler, Traci Sawyers, and Susan Aranoff. Chair Roy said she would be adding an audience and communications item after the action item. She advised the Advisory Group (AG) members and participants to identify themselves when they speak. She explained that the State Board of Education (SBE) asked them to hold this meeting so that the AG could adopt formal recommendations to be presented to the SBE at their December meeting and this would be the only agenda item discussed.

Action: Rules – Adopt Advisory Group Input for State Board of Education

Chair Roy explained that in her recent email to AG members she tried to capture what was discussed at the last meeting and that Mahusky sent a revised draft. She added there was also an email sent with information from Elizabeth Novotny on behalf of several small-special education schools. Chair Roy started with asking if there was agreement on the revised draft

definition of special education. Moore asked why the full federal definition was not used and if it could be incorporated by reference. Simmons explained that it was truncated because of its length. Chair Roy clarified that what is being adopted is what will be recommended to the SBE, which may be draft language or support of the AOE draft. Cutler clarified that there is reference to the SBE rule and the federal definition in Mahusky's revision. Moore asked for consensus on this. Mahusky suggested that the full definition be included in the recommendation to the SBE. She continued that even though the SBE is asking for unanimity, it would be ok to offer some changes that warrant further discussion. Ceglowski offered support for Mahusky's outline. Chair Roy offered that the SBE's request might be unrealistic in what it is asking of the AG, who meets only once a month. Moore disagreed and said that the AG could come to consensus with alternative language.

There was discussion on 1304.1 (general rules), incorporating language from the Federal Education Group (FEG), the AOE determining how these funds are used, stakeholders having a voice, avoiding AOE doing all this work and presenting it to stakeholders without the AG having a voice, and meaningful stakeholder input and meaningful response.

Chair Roy recapped that the AG agrees in concept with the revised draft definition and would like to have the full federal definition but understands why the definition is truncated for that section.

Chair Roy moved the discussion to cost documentation, stakeholder input, and input from FEG. There was discussion on the separation of construct and Maintenance of Effort (MOE) being left to guidance. There was general support/consensus for Mahusky's language. Chair Roy asked about the language referencing the AG and advised that the AG will not exist indefinitely. Mahusky offered to have it include school districts and the member organizations of the AG.

Chair Roy moved to the next item of therapeutic independent schools. There was discussion on allowable costs, including language suggested in Novotny's email so that it reflects the language in Act 173, using Novotny's suggested language or Mahusky's language, where this language should go, federal law requiring a continuum of placements, Section 504 situations where independent schools are involved, capturing Section 504 students in MOE, and unintended consequences. There was support for Novotny's language. Chair Roy expressed concern that Novotny's language would cause a situation where a 504 student cannot be placed in a special education independent school. There was agreement that Novotny's language addressed this. There was discussion on MOE and 34 C.F.R. § 300.203, that services provided to eligible and non-eligible students are in an eligible student's IEP, permissive use of funding, permitted services counted towards MOE, parameters for where services are provided, and adding language from Act 173.

Chair Roy referenced the November discussion of the AG and spoke about the majority of the AG feeling that there are still unresolved issues in the 2360 series related to Act 173 and reiterating the AG's recommendation to the SBE that they engage in outside support as they continue to draft rules because there are complicated parts that have not yet been addressed and other issues that need attention and time is limited. She asked for feedback. There was

discussion on the AG spending time on other issues besides rules, the importance of an independent entity owning the rules, alignment on some things, and the need for an MTSS rule. There was general support for these two ideas. There was further discussion on the SBE taking ownership of the rules, additional stakeholder input, outside support making the process more efficient, AOE drafting the rules 2360 as the SBE has no staff or funding, SBE's request of the AG to draft alternative language, this being a once-in-a-generation opportunity for the education community, and the importance of making this recommendation to the SBE.

Chair Roy asked for a motion. Moore moved to accept the rules as presented to include Novotny's language in two sections and the discussion and recommendation on consultation with the AOE on its guidance documents. Mahusky seconded the motion. There was no further discussion. Chair Roy called a roll call vote. YAY: Price, Nichols, Moore, Mahusky, Garrecht, Francis, Ceglowski, and Roy. The vote passed unanimously. Chair Roy asked for a clean copy of the proposed rules from Mahusky.

Chair Roy asked for a motion regarding a recommendation for the SBE to engage with an outside entity for the remainder of the rulemaking process. Nichols moved; Price seconded. There was discussion on how and by who this would be conveyed to the SBE, that whoever conveys it should note that the AG's time is limited, acknowledge the AG's specific role and capacity and the complexity of this task. There was discussion on amending the motion or agreeing to use this language when conveying this message to the SBE, and if the recommendation would be in writing or not. Francis made a friendly amendment to supplant "outside entity" with "engage their own agent to take responsibility for their role in the rulemaking process." Nichols accepted this. Chair Roy called the vote. YAY: Price, Nichols, Moore, Mahusky, Garrecht, Francis, Ceglowski, Roy. The vote passed unanimously.

Opportunity for Public to be Heard

Chair Roy asked for any audience communication. There was none.

Adjourn

Chair Roy adjourned the meeting at 9:19 a.m.

Minutes prepared by Maureen Gaidys.
