



Act 173 Advisory Group
December 6, 2021, 9:00 a.m. – 12:00 p.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; Jeff Fannon, 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); Jay Nichols, Vermont Principals' Association; Mill Moore, Vermont Independent Schools Association (VISA); Lisa Bisbee, VT-NEA-selected practitioner; Sue Ceglowski, Vermont School Boards Association; Elizabeth (Beth) Novotny, Council of Independent School (CIS). Brenda Fleming, (joined at 9:21 a.m.), VT Association of School Business Officials (VASBO)

AOE: Meg Porcella; Chris Case, Bill Bates, Jennifer Perry, Bob Coathup, Cassandra Ryan, Chris Kane, 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. There were no amendments to the agenda.

Review and Approve Minutes from October 4, 2021, Meeting

Francis moved to approve the minutes; Nichols seconded. Fannon offered a friendly amendment to replace the word "in" with "required by" on page two, third paragraph, second page. Francis accepted the friendly amendment. Chair Roy asked if there were any abstentions; Novotny abstained. Chair Roy called a roll call vote. Yeas: Nichols, Fannon, Francis, Price, Bisbee, Mahusky, Moore, Garrecht, Ceglowski, and Wilcox. The minutes were approved.

Opportunity for Public to be Heard

There were no members of the public to be heard.

Report out from the stakeholder group regarding cost documentation/Maintenance of Effort (MOE)

Ryan spoke about the meeting schedule for the stakeholder group (every three weeks) and that what was determined: state time studies will not be required after the implementation of Act 173; federal time documentation will still come into play; Individuals with Disabilities Education Act (IDEA)-B requires MOE and Local Education Agencies (LEAs) are required to calculate this; need to be mindful of eligible expenses; state block grant can be used on expenses that are not eligible for IDEA-B/MOE; LEAs are going to need some sort of methodology for expenses that are not eligible for MOE, including compensation of staff. This

workgroup will be collaborating and exploring some suggestions received from the field: 1) one system vs. multiple systems – using the federal methodology for time and effort 2) LEAs might already have a process that is working. Everyone on the group is clear on wanting this to be as least administratively burdensome as possible. Chair Roy highlighted that the first body of work the group will do is to understand the federal requirements so that there can be as much flexibility as possible, and the hope is that by the January meeting of the AG there will be a presentation of those federal requirements. Ryan explained that the federal regulations were revised in 2016 and there was some flexibility, but no one understood how to use it. The Office of Management and Budget (OMB) just reviewed this document and did not make any changes. Secretary French spoke about the stylistic aspects of designing this with not only flexibility in mind, but likelihood of compliance. There was discussion on the importance of flexibility, the AOE taking leadership, and balancing flexibility with internal controls. The stakeholder group will meet every three weeks and the full AG will be updated regularly.

Discussion - Rules Series 2200

Chair Roy gave some context for this discussion item and the AG's role in providing input to the rule series 2200. She explained that there was significant public comment on rules series 2200 and that prompted the State Board of Education (SBE) Rules 2200 subcommittee to ask the AG to discuss the public comment received and if necessary, make recommendations for different language. This decision would not be made during the meeting but would be discussed and voted on at the next AG meeting which is in advance of the SBE's January meeting. Two primary issues are open enrollment for students with disabilities (SWD) and rate setting approval.

Review of public comments

Open enrollment: There was discussion on 2229.4, 2229.4(b), why the AG supported the language, enrollment being first-come-first-served, rule accomplishing goal of intent, guarding against LEAs improperly influencing decisions, non-discriminatory enrollment practices, placement vs. location, policing of open enrollment, protecting independent schools from disruption of enrollment that could happen as a misalignment with mission, not wanting any student to be discriminated against if school is receiving public funds, adding non-discrimination language, specialized instruction sits on top of core instruction, acknowledging that Individualized Education Program (IEP) teams need to address nuances, Mahusky and Novotny working together to suggest alternative language, AOE creating guidance, formal rule-making vs. AOE guidance, and focusing on the rules and not recommending guidance.

Rate setting: There was discussion on the dueling need of the AOE to have financial information about an independent school (IS) and the amount of time and effort to produce that information and wanting to land where the AOE is satisfied with the viability of the IS and able to make sound decisions about the use of public funds. The current draft language combined several financial areas into one. Moore spoke about difficulty reaching agreement with the working group and noted that a key player in reaching a compromise was Ryan.

Chair Roy called recess at 10:24 a.m. and resumed at 10:30 a.m.

Chair Roy clarified that AOE staff who were part of the stakeholder conversations were not participating in today's meeting and some public comment included members of the stakeholder group who gave comment as private citizens. Ryan spoke about issues that came up at the meetings she attended including

fundraising, revenues received, donations, and how revenue was reported. She explained that this ended up being neutral in the calculations and there is language to address this as it was outside the rate-setting arrangement. She explained that equitable services were also discussed and if this needed to be reported as revenue. Federal funds do not go to independent schools, only services and these services are supplemental to the regular educational offerings. Moore offered that there was also discussion on the presumption of good faith. Ryan explained that a certification statement was included to address accountability and accuracy of information provided. There was discussion on financial capacity/incapacity, section 2229.7 is in conflict with statute, how donations are handled with public schools, restricted use and intent of funds and Act 68.

Discussion of recommendations (action to be taken at January meeting)

Novotny will draft revisions to section 2229.7 and send this to Chair Roy for distribution. Chair Roy suggested that the joint (Novotny and Mahusky) draft revision on open enrollment be included with this, and both will be distributed to the full AG prior to the January AG meeting. For action in January, the AG will vote on recommendations, specifically the two changes discussed at the meeting. There was discussion on a spreadsheet shared with SBE Rules 2200 subcommittee, and follow-up needed with Emily Simmons.

Discussion - Collecting topic areas for the January report to the General Assembly

Chair Roy explained that typically she drafts the report, sends it to the AG, asks for comments at the January meeting, where it is approved and then it is sent to AOE for formatting and submission to the General Assembly. She suggested the following topic areas in no particular order: any summary recommendations that come out of the discussion of the rule series 2200, readiness of LEAs to implement new rules, AOE's plan for professional development, summary of cost documentation subcommittee's work and the issue of delaying implementation.

Discussion - Advisory Group perspective regarding further Act 173 delay including delays to Special Education Rule changes

Chair Roy introduced the topic of a delay in implementation, including both financial and programmatic impacts.

Case spoke about conversations at AOE regarding the field being ready to absorb programmatic information and needing to consider programmatic delays and the fiscal impact. He spoke about wanting to tease out the totality of the situation or identify isolated pockets of concern and about the anticipated professional development (PD) plan and challenges in implementation. The originally anticipated deadline was aggressive, and they were not anticipating the degree to which the field would be taxed due to the pandemic and staffing shortages. AOE has heard from people that their capacity is impeding engagement and AOE is re-examining the scope which needs to be addressed in a more systemic manner. As the scope of what needs to be covered expands, so does the pressure of the timeline. AOE is looking to extend implementation specific to adverse effect and SLD, to July 1, 2023 and are investigating the fiscal implications. Kane spoke about hearing that many districts need support in data systems, matching intervention to need, measuring fidelity, progress monitoring, etc. and the staffing shortages and staff exhaustion are compounding this problem.

Chair Roy said this was a good time to surface these issues. She noted that the two issues identified, adverse effect and SLD identification, came out of public comment and are not necessarily required to implement Act 173 and acknowledged that it is really hard to disconnect these efforts.

There was discussion on support for delay of implementation because of dire levels of stress in the field. Price said that parents will be dismayed to hear of a delay and will not support it. Francis shared that administrators and special education directors feel that delay is important for many reasons. He talked about categories of influence supporting a delay (uncertainty of fiscal implications in context of the Weighting Study, duress/stress of system, complexity of rules, worker shortages, etc.), implementation being caught between the necessary realities of change and the impact of the pandemic on readiness and capacity, moving forward would be problematic, delay should be accompanied with a very rigid, affirmative plan forward and that we do not have the luxury of time. Garrecht spoke about teachers covering for each other and support staff and losing planning time and that any additional workload could be unwelcomed. There are significant shortages in social-emotional support staff. Mahusky said she is not unsympathetic to the issues raised and not losing sight of the pandemic's impact on all students (and parents), but she would have a hard time supporting a delay because of the children who would benefit from the change in rules. She also noted that we have been talking about PD since the beginning. Nichols said the majority of his representation support delay, because of capacity concerns and worry about teachers and morale in their schools. Lack of PD remains a problem and AOE tries to provide support to the field but is limited by staff and pandemic issues. Bisbee said that disability determinations are typically a rule-out process and quarantine affects that. She worries about students missing core instruction and interventions are also delayed. Case said that AOE work will move forward (with PD) even with a delay, and he expressed concern for what a delay would mean for vulnerable students. Chair Roy said VCSEA struggles with clear support they have for Act 173 and the importance of this work being delayed and recognized that the field is experiencing the most extreme staff shortages ever. She said repeated delays cause concern and questioned if another delay would really ensure that work continues. There was discussion on students benefitting from rule changes, risk of poor implementation, role of AG in informing/inspiring state deliberations, and developing a plan anticipating questions. Chair Roy asked if members had ideas for formulating a plan. There was discussion on figuring out a robust process that works for both high functioning and struggling districts, revisiting the idea of a workgroup, needing non-AG participants (or not), how PD should be provided and articulated, possible hybrid solution, convening a group to discuss this as soon as possible and bringing a proposal to the General Assembly. Chair Roy proposed a convening of some AG members in December to work on possibilities to present to the full AG at the January 3, 2022 meeting. There was consensus on this. Francis, Myers, Case and Mahusky expressed interest in participating in this effort. Francis asked if Chair Roy could offer a communication to Chairs Webb and Campion, giving them an acknowledgement of the situation and the plan forward.

Finalize meeting schedule

The meeting schedule will remain the first Monday of the month; next meeting is January 3, 2022.

Adjourn

Chair Roy adjourned the meeting at 12:01 p.m.