



Act 173 Advisory Group
December 2, 2020, 9:00 a.m. – 12:00 p.m.

Draft Meeting Minutes

Microsoft Teams Virtual Meeting

Call In: 1-802-552-8456

Conference ID: 400 861 722#

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, Vermont Council of Special Education Administrators (VCSEA); Marilyn Mahusky, Vice Chair, Disability Law Project; Jeff Fannon, Vermont-National Education Association (VT-NEA); Brenda Fleming, Vermont Association of School Business Officials (VASBO); Jay Nichols, Vermont Principals' Association; Peter Garrecht, Vermont Council of Special Education Administrators-selected special educator; Cheryle Wilcox, Department of Mental Health (DMH); Jeff Francis, Vermont Superintendents Association; Mill Moore, Vermont Independent Schools Association (VISA); Karen Price, Vermont Coalition for Disability Rights; Lisa Bisbee, VT-NEA-selected practitioner; Sue Ceglowski, Vermont School Boards Association; and Dan French, Agency of Education (AOE).

AOE: Meg Porcella, Emily Simmons, Maureen Gaidys

Others: Jo-Anne Unruh; Vermont Care Partners (VCP); Chelsea Myers, Vermont Superintendents Association; Marianna Donnally, DMH; and Kimberly Gleason, State Board of Education (SBE).

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

Chair Roy called the meeting to order at 9:04 a.m. There were no amendments to the agenda.

Review and Approve Minutes from November 2, 2020 Meeting

Nichols moved to approve the minutes; Fannon seconded. There was no discussion. Chair Roy asked if there were any nays or abstentions. Lovett said he would abstain. Chair Roy called the vote; the minutes were approved.

Opportunity for Public to be Heard

There were no members of the public to be heard.

Discussion & Action: 2200 Series Rules

Chair Roy introduced this item and shared that the Working Group met once since the last meeting and that there was one area of disagreement, but that she hoped they could focus on other discussion and then spend some time on the one point that likely needs additional discussion. Simmons introduced herself and explained that the Working Group convened as a full group and then she had 1:1 meetings with two individual stakeholders on detailed thoughts. She offered to highlight [changes since the AG last saw a draft of the rules](#) and walked the AG through [this document](#).

There was discussion on clarification of rate setting being outside the scope of Act 173, this being a substantive change, the SBE having their own interest in making changes to the Rules Series 2200, and further discussion needed along with section 2229 (Procedure for Students Receiving Special Education Services to Enroll in an Approved Independent School).

Simmons spoke about 2229, a relatively new rule that states the obligations that an independent school must meet to be approved or receive publicly funded tuition. Simmons outlined the procedure for enrolling these students (2229.4). There was discussion on changing language, first-come-first-served, publicly funded vs. privately funded, when the decision is triggered, request for enrollment serving as the trigger, moving this up in the order of procedure, difference in process between accepting (school decision) and enrolling (parental and LEA), equal opportunity for Students with Disabilities (SWD) to apply and be considered, use of the word "enroll" coming from Act 173, re-ordering the sentences, "enroll" vs. "apply," using "acceptance" as placeholder for enrollment, definition of "enroll," language applying to students in tuition towns, lottery process for school choice in public schools, replacing in 2229.1 "open enrollment" with "enrollment requirements for students, independent schools and Local Education Agencies (LEAs)." Moore expressed concern from VCP about the November 15 deadline for rate applications which does not align well with Concurrent Education Rehabilitation and Treatment (CERT) Medicaid rate scheduling. He added that VISA is also concerned that the calendar for submission, consideration, and final approval be reviewed and clarified. There was further discussion on rate-setting rules and the schedule for Medicaid rates. Ceglowski asked about 2229.4 and the section's limited application to school choice districts and if that was clear. Simmons offered to review.

Chair Roy said she wanted to give the SBE an update and asked if the AG was in support of the revised rules with the three revisions suggested and leaving the issue of rate setting in the parking lot. The AG was in general agreement. Chair Roy asked if there were any pieces, absent rate setting, for which there were concerns. There were none.

Chair Roy summarized the three major changes to the draft rules: 1) heading change for 2229.4 to say, "Procedure for publicly-funded students receiving special education services to enroll in an approved independent school," 2) the reordering of the process bullets under 2229.4 and 3) 2229.1 "open enrollment" is changed to "requirements for students, school and LEAs." She asked for comments from the AG on where the rate setting discussion should rest. Gleason said there will be more time for public comment at the December 16 SBE meeting for Rules Series 1300 and 2360 and that there will be another committee to work on Rules Series 2200. The SBE is in a place of appreciating that the rules are as complete and current as they can be, once opened. Chair Roy added that the AG came to a similar place and the SBE still wants to hear from stakeholders, even beyond the AG.

Chair Roy asked Secretary French if he wanted to give his COVID-19 update since he would not be able to rejoin the meeting following break. Secretary French said that he continues to wait to see what the trend was for data following the Thanksgiving holiday and it should be available at the end of the week. He also suggested that the AG and others follow the deployment of the COVID-19 vaccine.

Chair Roy recessed for break at 10:33 a.m. to reconvene at 10:45 a.m. She called the meeting back to order at 10:46 a.m.

Chair Roy added that Gleason had included in the Teams Chat that the SBE Rules Series 1300 and 2360 committee will be meeting on December 10, 2020 and any recommendation to the full SBE from that committee will be a *draft* as both the committee and the full board will continue to consider all feedback received through December 31, 2020.

Chair Roy asked the group to stay on schedule and invited discussion on rate setting. Moore spoke about the AOE's approach to rate setting, this being part of the current rules and that all agree that the current rate setting process needs revision. Simmons clarified the timeline for the rules and offered that rulemaking has not yet been initiated by the SBE. Moore asked for Simmons to clarify the AOE's intent on rate setting. She explained that the work on rule-setting with legal and the independent schools division was only in the very beginning stages of creating a draft – it has not yet received the full attention it needs. She said it would be helpful for the AG to consider a process conversation and agreed to Chair Roy's suggestion of replicating the same process for rate setting as what was used for the prior working group. Chair Roy suggested deciding on members of a new stakeholder working group to serve this purpose. There was discussion on moving expeditiously, this working group reporting at the February 1 meeting, Rules 2231 and 2232, reporting progress to SBE, who would serve on this working group, who served on the current working group, and if there should be additions. Price offered that there should be representation from therapeutic independent schools. Wilcox suggested a DMH representative. Simmons asked Chair Roy, Moore, and Wilcox to email her with representatives for this new working group by December 11, 2020 so that she could work to get a meeting scheduled.

Updates from Agency of Education

Professional Development (PD) Subcommittee Meeting Update

Meg Porcella, Student Support Services Division, Assistant Director, spoke about the PD subcommittee meeting and said that it was very positive. Very pointed questions were asked and very thorough feedback was received and appreciated. The feedback identified a need for emphasis on student supports specifically the Education Support Team (EST) concept as it relates to Act 173 system levers. AOE staff suggested convening again in February to specifically discuss where and how the messaging and communication systems can be improved and to share resources in development specific to ESTs. She asked if members would be available for such a meeting in February/March. Chair Roy asked Porcella to share some of the input received and what the AG could expect to come from the February meeting. Porcella spoke about communication was happening and realizing that it wasn't getting where it needed to go, AOE needing to identify better ways to communicate and offer support, continuous improvement targeted at the SU-level, and leveraging information to schools. There was discussion on special education funding, worry about interventions and lower tier supports, major concern with implementation reaching classrooms, education partners not having resources for this, resources needed to get PD to every classroom in the state, the Weighting Study, Act 173 being about changing behavior and then the funding (not vice versa), equity coaching and connections with Act 173 made by the AOE, braiding PD and technical assistance to include the four system levers and to be in alignment with the work of the Education Quality Assurance division, coaching across teams and AOE's multi-tiered systems of support (MTSS) team is available and providing support to several districts.

Discussion: Advisory Group Report to the General Assembly (GA)

Chair Roy advised that she will submit a draft report to the AG in advance of the January meeting and in preparation for the meeting she reminded the AG that the charge of the report is to 1) Advise State Board of Education on rule development to implement Act 173, 2) Advise Agency on Implementation and 3) Recommendations for Statutory Changes. She shared her ideas: update on rules development going back to Rules Series 1300 and 2360 and current work on Rules Series 2200, being very clear how important the PD piece is, that there is language that limits the right to action on behalf of families and there is concern that this violates parents' rights under Individuals with Disabilities Act (IDEA), with so many iterations the implementation date is extended but the date for training and technical assistance on the delivery of special education services has not been addressed. The AOE is required to set aside some IDEA funds for that purpose. The current law says that will expire by FY21 and that should also be extended. Mahusky suggested including a separate multi-tiered systems of support (MTSS) rule either in statute or rule. Chair Roy asked for any other suggestions to be forwarded to her via email. Wilcox offered to draft a paragraph on collaboration with DMH to be included.

Chair Roy reviewed agenda items for the January meeting: review draft report to GA, update from AOE on PD and COVID-19, and an update on Rules Series 2200 rate setting stakeholder working group. Chair Roy said it is likely that the January meeting will be shorter than usual.

Adjourn

Chair Roy adjourned at 11:38 a.m.