

Draft Meeting Minutes

Meeting Place: McFarland House

Address: 5 Perry Street, Penthouse Conference Room #315

Date: April 1, 2019

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 Members: Meagan Roy, VCSEA; Daniel French, AOE; Tom Lovett, CIS (arrived at 11:40 a.m.); Jeff Francis, VSA; Mill Moore, VISA; Jeff Fannon, VT-NEA; Jay Nichols, VPA; Sara Baker, VCSEA Special Educator; Lisa Bisbee, VT-NEA Special Educator; Nancy Richards (representing Karen Price, parent member, VCDR); Rachel Seelig, Attorney, (representing Marilyn Mahusky, VLA/DLP); and Nicole Mace, VSBA.

Others: Randi Kulis, BRSU-Manchester; Philip Eller, VATF; Sue Wilborn, BRSU; Julie Staub, Stern Center; Blanche Podhajski, Stern Center; Traci Sawyers, VCSEA; Chelsea Myers, VSA; Dillon Burns, Vermont Care Partners; Marianna Donnally, DMH; and Susan Marks, (via phone).

Agency Staff: Alena Berube, Judy Cutler, Meg Porcella, Tom Faris, Maureen Gaidys.

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

Chair Roy called the meeting to order at 9:40 a.m.

Review and Approve Minutes from March 4, 2019 Meeting

Chair Roy asked for a motion to approve the minutes from the March meeting. Nichols moved. Bisbee seconded. Chair Roy called the vote. The vote passed unanimously.

Chair's Report

Chair Roy reviewed the agenda. She updated the group on her testimony to the House Education committee last month on the technical changes bill and shared that she also spoke with this committee about the timeline for rules and the issue of delay. She said that the House Education committee also asked the Advisory Group to consider how districts would use this delay and what purpose it would serve.

Secretary's Report: Independent School Funding

Secretary French reported that he convened some internal meetings last month and is sharing the ideas from these meetings with stakeholders. He will be inviting stakeholders to give feedback on the work product over the next two weeks and will inform the Advisory Group, once revised. Chair Roy noted that the current rules are silent on independent schools and asked if there would be additional clarification. There was discussion on the need for statutory change, sense of urgency and tight window for this year, disconnect between which set of rules will go into place with the current reimbursement model, State Board of Education's role and the plan to receive the rules at their April meeting.

Review and Discuss Draft Rules – Agency of Education (AOE) Presentation and Discussion

Chair Roy explained that the plan was to have Cutler recap the rules and then each member will have 3-4 minutes to weigh in on key points from their respective organization and then will open the floor for a broader discussion. She said the AOE has asked specifically for summary-level recommendations and that there will be an opportunity for normal rulemaking input later in the process.

Judy Cutler, AOE, introduced herself and shared that the AOE has taken the existing set of rules (2360) and removed the funding aspect and drafted a new separate and distinct rules series. The work has been two-parts. Along with drafting new rules that will implement the census-based funding model, there were also many revisions made to the existing special education rules. She explained that the process of rulemaking is that the AOE will approach the SBE with a recommendation to adopt the new rules or revise the body of rules in a particular way. This triggers a process where the SBE opens the rules. Cutler said that at the April SBE meeting, the AOE will recommend that the SBE adopt the new census-based funding rules series as well as specific revisions to the existing rules. If the SBE accepts the recommendation of the new special education funding and special education finance rules are finalized, then there will be two separate rules series and if one needs to be opened, that can be done without opening them both. She clarified that all special education rules will be open and there will be an opportunity to comment on anything in the rules.

Cutler continued to speak about collaborative program rules (under section 367), the excess cost rule, considering separating those two rules so that they are more aligned to the statutory roots, confusion around excess cost definition, that independent school rules would be addressed after the funding rules were on their way, and that the AOE wanted to hear the group's feedback. Chair Roy acknowledged that the rulemaking subcommittee understood the AOE's approach to address the funding rules first and the independent school rules second but that there is a potential problem/challenge if the new finance rules go into place and other pieces have not been resolved.

There were questions and discussion on the process/mechanism for rules suggested to the SBE, hesitation of the SBE to move forward without the Advisory Group's recommendation, opening other parts of the rule series, involvement of special education attorneys, Susan Marks' participation in this process, constrained resources, and issues of Child Find. Cutler spoke about Marks' continued involvement in the process and said that Marks had consulted/weighed in on all work and that AOE attorney, Clare O'Shaughnessy, was also involved and that either would be happy to speak with the Advisory Group. Cutler said that Marks had received Mahusky's comments/concerns. Chair Roy said it would be beneficial to hear from the AOE special education attorneys. There was discussion on assumptions about how this is going to work, needing to have special education attorneys involved, how Multi-Tiered Systems of Support (MTSS) integrates into this system and rules series 1300 and 2360.

Chair Roy explained that the charge was to give input to the rules that are being opened with the purpose of being able to implement Act 173 and that the AOE wants summary information so that members would be given individual time to speak, followed by a broader group discussion.

Bisbee: asked why only students who are *reading* below grade level are addressed – what about other subject areas, defining “below grade level,” maintenance of effort (MOE) and small schools with fluctuating enrollment, written statement vs. written plan, and cannot vs. is not.

Chair Roy: concern about perpetuating the concept of allowable costs, need for a mechanism for tagging students, many questions around monitoring of use of funds and programmatic implementation, questions about how the AOE will conduct the comparison between IEPs and program and services provided, how service delivery will be documented, any improvement plan suggested by the AOE should be aligned with the Continuous Improvement Plan (CIP) process, needing more detail for time documentation, allowable cost guidance, proposal to use IDEA-B requirements to govern special education funds, and clarification needed on the use of money left over after special education provisions are ensured.

Baker: spoke about guidance on defining “struggling learner,” how service delivery will be monitored, more clarity needed around what the rules mean to the practitioner, need for professional development, how this does and does not overlap with IDEA, and the responsibility to kids with disabilities.

Fannon: spoke about the promise of Act 173 being a reduction in paperwork and increase in flexibility and that nothing appears that way, disparity of time studies for state or federal government, adding flexibility, timeline is too short, delaying effective date to allow for professional development, mentioning professional development in the rules as this a dramatic change for the field and training is needed for *all* educators.

Richards: spoke to page two and her concern that if the ability to learn is negatively impacted by disability then there should be an evaluation process, including a functional assessment and that this is important for program planning, “negatively impacted” needs to be defined, reframing this so that it is better understood, MOE, and some language being contradictory to language in 1305.1.

Seelig: said because they have had the opportunity to comment, they are comfortable moving this to the SBE, would like to have more time with 2360 (than we had with 1300), some misalignment with rules 1300 and 2360, definition of special education services, definition of IEP, importance of having consistent definitions across rules series, ties between funding and service provision, need for regulations around MTSS and how this interacts with the provision of IEP services.

Mace: said that Act 173 was a theoretical exercise, agrees that the rules are not clear enough in terms of documentation requirements and reductions in this, reference to permissive use of funds (using funds that benefit non-disabled students) – creates confusing language and doesn’t work if an IEP requires 1:1 support, timeline is extraordinarily compressed, that this product satisfies the letter of the law, but not sure it moves us towards implementing that intent of the law, more time is needed to determine how this is actually going to work.

Francis: concurred with all feedback that was given, has concern about getting this right and not burdening the field any more, hasn’t had time to share this with superintendents, looking for more insights from folks involved with the delivery of special education services, concern with initiative fatigue, and the need to be cautious.

Moore: is glad for acknowledgement for doubling back on the rules going to the SBE as there are connections that influence each other, he questioned page 5 and allowable expenditures and asked if direct costs are allowable costs or if there is a difference, he asked why there was a distinction between public and private schools, and if there was a requirement that a distinction was made between the two, enforcement or accountability of subsequent years rule, in addition to loss of funds.

There were further questions and discussion on Vermont Standards Board of Professional Educators (VSBPE) dealing with issues and a double standard existing for independent schools if they failed the MOE.

Nichols: expressed concern that burdensome paperwork doesn't take away the flexibility of the law, monitoring needs to be simple, focusing on the needs of the student and not category of disability, and that hopefully by 3rd grade most students are successful, fully support the MTSS with permeable tiers, lots of professional development needed for the field and that this needs to be crystal clear with no ambiguity.

There was group discussion on VCSEA's worry around the variability in the state around the implementation of MTSS and that in the attempt to address this variability, MTSS implementation will be affected; need for guidance vs. rules; lack of sureness that AOE is fully staffed with special education expertise and not just MTSS; that AOE has lost veteran staff and there is a need to ensure that the AOE is staffed appropriately to balance both MTSS and special education; having rules that support a framework; providing MTSS should not stop the special education process and there is fear and evidence of this; heavy lift for some districts and if there is a way to better support schools that are having trouble meeting their Child Find requirement; why the rules don't address the funding mechanism and worry about putting too much in a guidance model down the road; guidance that is generally applicable can and should be in a rule; approaching the rule vs. guidance around funding and what could change; monitoring, allowable cost guidance and uniform chart of accounts; the administrative burden of putting this in a rule; and the ability to make changes annually without going through the rule process.

Chair Roy summarized that many of the comments are related to the afternoon's discussion on delay, MOE and lack of clarity on how it will be calculated, and many unanswered questions on paperwork burden, how to identify services, and the definition of students who need additional support. Cutler shared that part of the tension around this is that much of the money involved has federal restrictions and how this contrasts with the ideas, hopes and dreams of Act 173. The reality is finding areas of flexibility and coming up with policies and procedures, but in the end, the AOE needs to make sure that federal obligations are fulfilled, and it is difficult to write in flexibility where it does not exist. She asked the group to keep in mind that there are obligations that need to be fulfilled by the AOE.

There was further discussion on needing to brace for this change, limitations on what can be done in the quest for simplicity, that this law is more complicated in its specificity with stakes just as high as those in Act 60, confidence in those who are engaged, people's idea of how this law works, and not allowing history to repeat itself.

Chair Roy shared that Fleming, who was not present, had provided some thoughts to be shared with the group and that she will read this when the group returns.

Chair Roy called recess at 11:18 a.m. Chair Roy called the meeting back to order at 11:27 a.m.

Presentation: Technical Assistance and Professional Learning (TAPL) Group and Discussion

Chair Roy introduced the topic of TAPL and said that AOE would update on this topic, then there would be time for questions and reactions.

Meg Porcella, new Assistant Director for AOE Student Support Services division, introduced herself and spoke to her work at the AOE and gave an update on how Act 173 was being communicated around the state, the Comprehensive Needs Assessment toolkit, the Snapshot, and resources. She shared that the presentation had been updated and will be posted on the website. She spoke about information/resources that are in the works and infographics and one-pagers related to high level funding and high-level rules specific to Act 173. She said there are web pages dedicated to Act 173 and planned to launch prior to the next Advisory Group meeting, and that these are also being shared with other entities around the state. She spoke about Continuous Improvement Plan (CIP) and Consolidated Federal Program (CFP) investments, grant funds, coordinated message around BEST and Act 230 funds, and the roles and responsibilities around the SEA and LEAs/Schools.

Tom Faris, of the AOE MTSS team, introduced himself and spoke about TAPL: who will be receiving it, what types of support are available, how the AOE's accountability system will inform TAPL, how needs will be identified, how we know if schools will be making progress and the timeline. He gave an overview of TAPL, the overarching framework, the five components of an effective education system, equitable access to TAPL, that every SU/SD will receive support PreK – 12, types of support available (guidelines, online resources, professional learning that responds to the DMG report), using Networked Improvement Communities (NIC), examples of TAPL, online resources, menu of supports, how the AOE will support each category of systems (those who need comprehensive supports, those who need equity supports and schools ineligible for comprehensive or equity supports), how AOE's accountability system informs Act 173 TAPL, identifying TAPL needs, integrating the needs process to avoid parallel processes, how to know the schools are making process, the timeline for receiving TAPL, and upcoming spring and summer TAPL planned for SU-level support.

There were questions and discussion on identifying schools that need the most support, concern for the schools on the borderline, that there will be supplemental professional development, uses of the set-aside from the Legislature, capacity issues, professional development for teachers working in independent schools, plan to support districts not schools, accountability measures not relating to independent schools, contracted services relevant to Act 173, that first-come-first-served is not a good approach, needing to leverage \$200,000, and using train-the-trainer model and the math-for-all learners model to create a statewide cadre.

Chair Roy called recess at 12:21 p.m. to reconvene at 1:15 p.m. Chair Roy reconvened at 1:17 p.m.

Chair Roy asked if there were any more comments on professional learning. Bisbee spoke about data management capacity, long-term planning, administrative turnover, and a maintenance level of training. Faris spoke about systems capacity, data management being a critical piece, sustainability and helping to implement more of a flattened leadership model.

Discussion: Issue of Delay

Chair Roy said she would have everyone speak to the issue of delay within a time frame. Before that, she read Fleming's input that she neglected to share during rules discussion.

Fleming: appreciates work that went into the documents, needs more understanding of what AOE is planning for special education expenditure monitoring and MOE, delineating special education expenditures from permissible use expenditures for MOE and what and how the AOE would or could conclude how special education funding was spent first for special education students and then applied for permissible use.

Chair Roy asked folks to weigh in on the issue of delay and specify if it was a formal or informal conversation with member's respective organization and per House Education, discuss what would be done with the additional time, if delayed.

Francis: Subsequent to AOE's Thursday presentation to VSA, members were surveyed and there was a 50% response rate: 19 were supportive of a delay, 5 are not supportive of delay and 3 are unsure. The 5 that are not supportive are more well-resourced systems and prepared to move ahead with little reliance on the state. Those supportive of a delay said: field is overwhelmed with initiatives, lack of clarity on rules and implementation, concern about decreased funding without sufficient preparation, puts more vulnerable students at risk, concerns with capacity and staffing at the AOE, support system for content experts has not been realized, insufficient technical assistance, not enough training/communication with general education, evidence that principals are not engaged/prepared, many elements of professional development still under development, no clear service delivery models and concerns for extremely taxed business offices.

Bisbee: support delaying this and said unless feet are held to the fire this will not get started; she suggested a delay in *full* implementation and identifying the districts that will need the most support.

Lovett: only formal conversation he had was with his local SUs, business managers, special education directors, principals and superintendents and they are all in favor of a delay with comments similar to those shared by Francis.

Moore: had nothing to add from what he said this morning.

Nichols: has not surveyed his membership but discussed this at his last executive council meeting (strong principals) and they are ready to move forward but expressed concern for their colleagues and inexperienced principals, Vermont has 25% principal turnover each year, he suggested a one-year delay and then full steam ahead.

Roy: did not survey her membership, but the executive board has a few directors who want to make a statement about delay, she shared the following statement: *The intent of Act 173 was to provide SUs/SDs more flexibility to implement best practice outlined in the DMG report and beyond to enhance the effectiveness, availability and equity of services provided to students who require additional support, that is why we supported its passage. We have been closely following implementation and while this change is long overdue and represents what we know about best practice, it also represents a major shift in education funding and practice and it must be implemented in accordance with legislative intent. At this point we are concerned about: the current rulemaking process and timeline, including concerns about MOE and flexibility for SU; a lack of a comprehensive professional development plan as the first year of Act 173 passage draws near; that the three AOE positions included in Act 173 to support implementation have remained vacant; continued high rates of vacancy and change at the AOE related to fiscal and program areas; the departure of the CFO who has significant understanding of Act 173, and at a time when there needs to be comprehensive conversation around the major financial changes and implications; and lack of process on how independent schools will be included in*

the census-based construct. Another member of the board of directors said: "I'm all for MTSS but don't think that increased flexibility in splitting a shrinking state share of the special education funding pie is the way to jump start MTSS." Chair Roy added that VCSEA would caution that if delay is contemplated, it is deliberate, and it is indeed a delay.

French: said he is still undecided on delay and needs to review the fully drafted rules, hear feedback and consider this in conjunction with the other initiatives that are being implemented, and that there is a legislative vehicle available if a delay was wanted, options are open, and that he will formulate an opinion after hearing from stakeholders and in the next few weeks.

Baker: noted some unintended consequences, hates to delay something that could be good, suggested a pilot to keep some forward movement.

Fannon: supports the law and thinks there is flexibility to be had, supports the delay, the delay would allow there to be examination of the mandated/required professional development and how much is taking place around this issue, to make sure it is high-quality and useful and implemented with fidelity, let schools know if they will be losing money based on current analysis, this might make some attend to this better, and that the legislative intent is better service delivery vs. cost containment.

Richards: delay is appropriate, people need to feel informed and prepared, that there is still a lot of confusion between and among MTSS and special education, turnover and need for intensive training.

Seelig: is in support of delay to use this time to address rules, need a lot of professional development in order for this to be successful, need to set this up for success, need additional time to get this done and get it done well.

Mace: said VSBA supports at least a one-year delay in respect to funding pieces, have given delay in professional development by necessity, still a lot of work that has to be done, this law addresses both funding and practice, concern that the question is still unresolved, concern about the departure of the AOE CFO with Act 173 understanding, timing of the law does not let the weighting study inform the census block grant calculation which might need to be changed, this change has the potential to change the dynamic of litigation and can increase liability for districts and potential for litigation, concern that there is not a group of special education attorneys meeting regularly to discuss this, and still too many unanswered questions.

Chair Roy explained that since this is a discussion item only this month, that there will be no action today, but suggested that since most at the table were in favor of delay, that this be considered for next month. Secretary French reiterated that he doesn't support a delay, he is still undecided, and should be able to offer an opinion within the next two weeks. There was discussion on deciding today, why we would wait until next month, how the recommendation would be made, having the AOE's perspective, and taking a position on the question of delay that captures all positions via vote.

There was discussion on a specific vs. general motion, on page 15 of the Act striking all dates that say FY 20-21 and replace with FY 22 and continuing with that progression, there will be better rulemaking if extended, the benefit of pre-comment period needed for series 2360, independent school rules still being drafted, two submissions to ICAR/LCAR, anticipation in the law that implementation in independent school rules would come after, and the configuration of how the AOE handles rules.

Fannon moved to recommend delaying the implementation of the fiscal portion of Act 173 to begin in FY 22 and go on from there, instead of FY 21, and to push back the rule deadline to be 2020. Secretary French said the SBE would also be taking this up at the April 17, 2019 meeting. Fannon asked why French needed two weeks, and French replied that he needs time to debrief with his team and assess the scope of work. There was no further discussion. Chair Roy called a vote. Secretary French abstained; all other members voted in favor of the recommendation. Chair Roy offered to address the SBE with this recommendation and suggested a statement and offered to draft one (for the SBE and/or the General Assembly) and send it back to the group for consideration.

Chair Roy spoke about upcoming agendas and the request to have attorneys Marks or O'Shaughnessy, whoever is most appropriate, speak to the Advisory Group at the May 6 meeting. Secretary French said he could give another update/draft on the independent school rules at the May meeting.

Opportunity for Public to be Heard

Chair Roy invited any members of the public to speak.

Greg Van Bruiten, attorney, addressed the group. He praised the stakeholder exchange taking place and added that Vermont has a low incidence of litigation because there is a lot of time spent on communicating and problem solving. His request is that with more time there will be better, clearer rules with more consensus (2360) and the trickier parts will be remedied with a good solution.

Blanche Podhajski, Stern Center, reflected on how nice it is to see process work and how this has been an edifying process. She spoke to the MTSS intersection with special education and the role of professional learning – and that MTSS and Response to Intervention (RTI) was developed to provide general and special educators with the knowledge they need to teach all our children. The priority is to get this knowledge to undergraduate preparation programs and to the field and to ensure that the money is in place for research, evidenced-based, professional learning through Act 173.

Philip Eller, Chair, Vermont Autism Task Force (VATF), said he was very appreciative that the rules will be open and that he supports the delay in the implementation in Act 173. He also added that this is Autism Awareness month and that there are events planned for next week at the State House.

There was discussion on schedules for the summer. There is no meeting date planned for June. Chair Roy offered that if there was work to do, then they should be convening, but no need to convene for the sake of convening. Summer meetings should require meaningful work to be done. There was discussion on work to be done, how a delay would impact this, and that clarification is needed on time documentation. Chair Roy offered to add an agenda item for the May meeting that the Advisory Group will look at the work plan for June and the rest of the summer.

Adjourn

Chair Roy adjourned the meeting at 2:08 p.m.

Minutes prepared by Maureen Gaidys.
