

Draft Meeting Minutes

Meeting Place: McFarland House

Address: 5 Perry Street, Penthouse Conference Room #315

Date: January 7, 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:

Council Members: Meagan Roy, VCSEA; Tom Lovett, CIS; Jeff Francis, VSA; Mill Moore, VISA; Marilyn Mahusky, VLA/DLP; Jeff Fannon, VT-NEA; Jay Nichols, VPA; Karen Price, VT Coalition for Disability Rights; Sara Baker, VCSEA Special Educator; Nicole Mace, VSBA; Cheryle Wilcox, Department of Mental Health; Lisa Bisbee, VT-NEA Special Educator; and Brenda Fleming, VASBO.

Others: Mike Dooley, Director, East Valley Academy; Jennifer Stevens, Director of Student Services, Lamoille North SU; Traci Sawyers, VCSEA; Sue Wilborn, Business Manager for Bennington-Rutland SU; Patty Komline, VISA; Charles Storrow, Leonine Public Affairs - The Sharon Academy and Long Trail School; Chelsea Myers, VSA; Philip Eller, VT Autism Task Force; Susan Aranoff, VT Developmental Disabilities Council and Susan Marks, (via phone).

Agency Staff: Heather Bouchey (until noon), Dan French, AOE (joined at 1:00 p.m.); Jess DeCarolis, Judy Cutler, Tracy Watterson, Emily Byrne, Alena Berube, Tom Faris, Emily Simmons, Maureen Gaidys.

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

Chair Roy called the meeting to order at 9:40 a.m. and asked for introductions of the Advisory Group, AOE staff and members of the audience. Chair Roy advised that Fleming and Bisbee were en route.

Review and Approve Minutes from December 3, 2018 Meetings

Chair Roy asked for a motion to approve the minutes from the December 3 meeting. Lovett moved, and Francis seconded. Chair Roy called the vote and the vote passed unanimously.

Chair Roy spoke about the decision to work together as one committee and introduced the next item which was a report out on the two subcommittees that met previously, adding that they are not scheduled to meet again.

Report Out: Rule Making Subcommittee

Chair Roy reported on the rulemaking subcommittee's meeting. She noted that the committee discussed the Agency's recommendation to separate the rule making into three parts (Part B rules: already in alignment with federal IDEA; separating out the special education funding as its own chapter, and the funding special education for students enrolled in independent schools). She acknowledged that some subcommittee members had concerns with an approach that does not fully re-examine the Part B rules that don't address funding. There is a question of whether the charge of

the group (to update the Legislature on proposed statutory changes) and whether the AOE thinks that is in conflict with moving forward on rulemaking. The committee and members of the Advisory Group agreed to propose potential ways to provide special education funding to independent schools.

Report Out: Professional Learning Subcommittee

Nichols reported on the discussion of the Professional Learning Subcommittee: getting the support where it is needed, offering support for the Act 46 model and merging districts, next steps of working with the full committee and AOE to implement the law, agreement that the full committee coming together makes sense, the plan for Watterson to come back with a plan for how Professional Learning could be implemented. Mace added that there are limited funds available and that this should not be distributed on a first come, first served basis, but that there should be a series of indicators that will help to triage the state's resources and ensure that the gaps are not being exacerbated, but instead are strategically targeted.

Susan Marks joined the call via Skype; Fleming and Bisbee also joined the meeting.

Independent Schools Discussion

Statutory conflicts

Chair Roy asked Simmons if there was any statutory conflict with trying to attempt the rulemaking process simultaneously with recommending statutory changes to the Legislature.

Simmons responded that there were two bodies of work that could be taken on sequentially rather than concurrently and that there should not be any problem with taking on the funding rulemaking issue as that only impacts the SEA and the LEAs and their relationship of distributing a discrete set of funds.

There was discussion on the relationship between the SEA and the LEA and the independent school, direction from the General Assembly to initiate some of the rulemaking around this topic, that they could have used the word "complete" but they used the word "initiate," that the charge of this group is to recommend statutory changes that align the rules between independent and public schools.

Chair Roy spoke about the goal to have a decision point and a plan for reporting back to the Legislature by January 15 on potential statutory changes needed to implement Act 173 and that those changes are related to how special education is funded for independent schools.

Discussion of proposals

Chair Roy spoke about proposals from the independent schools and some of the education organizations and that those proposals had not been exchanged between the groups. Moore disagreed and said that he had met with Mace and seen the proposals from her group and was offering his response today. Mace added that Moore's proposal had not been shared with her prior to today and that the meeting also included a special education director.

A member of the public asked that the reports and material discussed today be made available on the website and asked for a re-introduction of the two independent school representatives that were part of the Advisory Group. Moore (VISA) and Lovett (CIS) introduced themselves again and Lovett

explained that the CIS is in statute as an advisory group to the Secretary and VISA is an independent entity not established by statute.

Roy shared that the VCSEA reached out to special education administrators and proposed some funding scenarios and that the education organizations would speak to their own proposal. Mace clarified that this proposal does not affect independent schools that solely serve special education students, but instead affects general education independent schools that accept publicly funded tuition students. She continued that the directors that offered input are involved in systems that operate public schools at some level and pay tuition for other levels and have an obligation to both provide special education services in public schools and in independent schools serving their students.

Chair Roy shared a copy of the draft proposal and shared an overview. She spoke about the conflict between the census-based funding amount that is limited and the current model that is a fee-for service, that this proposal looks at two scenarios based on the size of the schools, that Act 173 is also designed to improve service delivery and support for students with a desire to improve cost containment. She summarized that in this proposal independent schools whose population is more than 65% publicly funded, would receive the same average cost per pupil that the LEA has for students attending their local schools, inclusive of the census-based grant and a prorated portion of the FTE. Independent schools with less than 65% publicly funded students, would receive an hourly rate per IEP service and those rates would be set by the Agency. In both scenarios, extraordinary expenses would remain in place. Moore said that this was not what he had seen. Mace said it was close with some minor revisions made in response to his concerns. Moore disagreed and said it was significantly different from his proposal and that he would address that later.

There was discussion on the process for the FTE calculation, funding models of what the LEA will receive, who would endure the costs, differences from LEA to LEA, if the data on “65% publicly funded” is readily available, per student census-based block grant, where the 65% threshold came from (not treating schools differently based on their historical status), and school size as another measure.

Moore shared a presentation that spoke about the scope of IEP services in public schools, therapeutic schools and general education independent schools, data on approved independent schools, IEP students enrolled in independent schools, the general principles under which independent schools operate the reimbursement model, and the recommendation of CIS/VISA to apply census-based funding to schools enrolling 50 or more IEP students and large school concerns. He continued with the recommendation of CIS/VISA that schools enrolling fewer than 50 IEP students should operate on a reimbursement model, small school concerns, and therapeutic school enrollment and concerns.

Moore offered a recap from the prior meeting with the VSBA and its colleagues as he believed it was different than the handout that was distributed. Mace objected and said that what was presented was not the VSBA’s assertions, instead that it was a collaborative conversation.

Moore restated the recommendation from VISA and CIS that census-based funding be applied to schools enrolling 50 or more IEP students.

Moore and Lovett shared a number of questions and comments from their stakeholders: on the percentage of enrollment of IEP students, that independent schools operate as independent contractors with lower administrative expense because the LEA remains the responsible party, consistencies and inconsistencies with interactions between different LEAs, concerns with large schools, faith in MTSS and how to explain this to skeptical parents. There was further discussion on the fact that MTSS is evidence-based, that the concerns for independent schools are not that different than those of public schools, being on the same page with these challenges, student-teacher ratios in relation to Medicaid requirements, the difference being which schools will be funded, that this approach privileges schools that don't/haven't accepted students with disabilities (SWD), continuing with the current model, and small school concerns.

There was further discussion on small schools, small public schools that are benefitting from mergers, inherent challenges for small schools, therapeutic schools, current model of state setting the maximum rate, need for more of a role for the LEA on rate setting, reimbursement model that reflects the actual costs not the maximum allowable, critical need to have continuum options, and not making tensions worse.

Moore summarized his presentation supporting census-based funding for independent schools with 50+ enrollment of students on IEPs, continuing to follow 16 V.S.A. sec. 2973 for independent schools with enrollment less than 50, continuing with the current funding for therapeutic schools, sensitivity that independent schools are different, compensation for special education, administration and capital costs. Discussion continued on the rate setting process, Child Find, special education referrals, schools' ability to provide support outside the special education process, evaluations, source of funding available to LEA and SEA but not the independent schools, and parentally-placed students.

Lovett distributed a memo from the four academies (Lovett (St. Johnsbury), Tashjian (Burr and Burton), Perry (Lyndon Institute) and Bugg (Thetford Academy)) and spoke about the large schools being partners and feeling the same pressures, rulemaking and the definition of excess costs, MTSS and the use of this in independent schools, and that the voice of parents is important and needs to be heard and taken seriously.

There was further discussion on rulemaking, connecting this with MTSS, carving out the four large independent schools, serving the needs of students in independent schools, whether Medicaid pays for Child Find, building capacity, concern with equitable funding and that not all funds flow through to the independent school, that parents are not interested in the funding mechanism, importance of having non-disabled peers accept SWD, built in misperceptions of academy-students that SWD would detract from their educational experience, helping parents of these students be less elitist and more inclusive, obligation of making schools that accept public dollars to be accepting of all, and welcoming at all levels and that funding is symbolic of that.

Roy restated to the group where she thought they were at: 1) that there is agreement that having large schools operating under the same census model as public schools is the right model with the caveat that the relationship for the carve out of the FTE needs to be addressed and 2) there is agreement on some sort of reimbursement model for smaller independent schools, with definition of small and clarification of the model that needs to be determined with some sort of governor. Mace referenced

page 54 of Act 173 and that there is language on reimbursement there that is helpful, but implementation would need to be addressed.

There was discussion on how the per capita amount is calculated, effective dates of transition, the need to make this consistent, that Act 173 was the merger of two bills and punted to the Advisory Group to work out the kinks, that more information (i.e. weighting study) is forthcoming to inform the recommendations of the Advisory Group, the deadline to report to the Legislature and the need to report at a high level some conceptual agreement.

Roy offered that the Advisory Group still needs to finalize the definition of “small” and “large,” and that further clarification is needed on large schools using the census-based model and what that would include. Bouchey expressed concern about focusing on a number, as all enrollments are declining; she suggested a number plus a minimum headcount. There was discussion on size of school overall, the challenge of defining by infrastructure, using a minimum size of school size, public school assumptions and that independent schools are different.

Nichols moved to have a bottom number of students enrolled of 100 and if 65% of these students are publicly funded, then that would be a large school and fall under proposal A and everyone else would fall under proposal B. Lovett offered to amend this motion to conceptually agree to a minimum enrollment and percentage of publicly funded students, but to not specifically define these parameters as this needs further discussion. The original motion was seconded.

There was discussion on defining small schools as the state does (100). Mace expressed concern over being too vague in the report; Francis stated that from a process standpoint there will be much more headway made with specifics vs. conceptual generalities. Moore said that he was being denied the opportunity to go back and study these numbers. Nichols stood behind his original motion and expressed worry over meeting the deadline. There was discussion on making further adjustments to these numbers, struggling with the number 100 and how we would go about changing it, needing time to study it, that the issue was flagged by Mace back in late summer and that there has been plenty of time to consider it.

Chair Roy asked if Nichols wanted to accept an amendment. Nichols stood by his original motion and its specified minimum independent school size of 100 and 65% publicly funded students that would fall into a census-based funding model and that smaller schools would fall into a reimbursement construct with details to be worked out.

Fannon made a point of order on Lovett’s amendment. Lovett clarified that it would be absent the specific numbers. Moore seconded Lovett’s amendment. Roy called the vote. The vote to accept the amendment failed: 11:2:1. Bouchey abstained. Chair Roy called the vote on the original motion. The vote the vote passed: 11:2:1. Bouchey abstained. Bouchey explained her abstention in that she would want to confer with the Secretary before voting. Nichols asked if the Secretary is a voting member of the Advisory Group and Roy confirmed that he is a member of the Advisory Group.

Chair Roy called lunch recess at 12:04 p.m. to reconvene at 1:00 p.m.

AOE Update

Chair Roy reconvened the meeting at 1:05 p.m. and introduced the plan for the afternoon, starting with an update from AOE, then discussion of the report due to the Legislature.

Cutler introduced herself and started the presentation, which covered progress to date with the Center for IDEA Fiscal Reporting (CIFR), independent school rules and census-based funding rules.

There were questions and discussion on IDEA requiring the AOE to track allowable expenditures, monitoring vs. reimbursement for allowable expenditures, level of detail, and a request for a presentation to this group on the federal law and requirements.

Cutler continued to present on upcoming work with Special Education Directors and Business Managers and their work as they continue to draft the census-based funding rules and the hope to make good progress as there is substantive ground to be covered. There was discussion on changing the timeline, working with the existing timeline, advising the Legislature on the heavy lift of this timeline, if information was needed from the Advisory Group to inform the drafting of the rules, that by the next meeting there will be draft rules ready for feedback, that specialized expertise is needed for this and how is that being met, and that Susan Marks is the attorney on contract for this work for the time being.

Watterson introduced herself and shared that she is taking the lead on section 12 of Act 173. She shared that there is a Technical Assistance & Professional Learning (TAPL) team that has met twice and will be meeting weekly through June. She explained who makes up her team: Tom Faris, Lori Dolezal, Tonya Rutkowski, MC Moran and Kate Rogers. Watterson talked about possible approaches to differentiated supports to SUs, identifying differentiated support, comprehensive and equity supports, the five opportunities identified in the DMG report.

There was discussion on defining year 1, that it doesn't work to implement professional learning in January of this year, that we need to tell the General Assembly that the timeline doesn't work and that it makes no sense to provide this training this year, that it should be delayed until next year while we identify those systems most in need, that cost savings require a significant amount of programmatic change, that there might need to be a conversation for that which is not covered under IDEA, that the possible approaches leverage what is already in place and that feedback from the Advisory Group is requested.

Watterson continued with possible tools to use in evaluating TAPL outcomes. There was discussion on special education monitoring, parental input, Results Based Accountability (RBA), self-assessment of SUs, sharing of resources, form of support, having a cadre of specialized consultants (non-AOE) to be available, and what technical assistance (TA) looks like once the need is articulated.

DeCarolis spoke about initiative fatigue and stressed the need to proceed intentionally and not just layer another demand on top and about how the program team is informing the core team and that they are moving in an aligned fashion to avoid unintended consequences.

Byrne presented the budgetary tool that has been created by AOE and that it will be rolled out at the next VASBO meeting. She spoke about recommended statutory changes, the goal of the Act, updating the definition of "students who struggle" to be less restrictive, updating the definition of Long Term

Membership, updating the denominator calculation of the “Uniform Base Amount,” change reference to publishing costs to funding, unusual circumstances provision, and submissions necessary for IDEA reporting.

Report due to the Legislature (on or before January 15, 2019)

Chair Roy spoke about needing to run through the bullet points of what will be included in the report to the Legislature and that Byrne’s presentation still needs to be digested and considered before being incorporated into the report. Chair Roy asked about Agency support being available to draft the report. She said that she and Case had an initial conversation about the need for AOE support in the writing of this report but had not finalized anything; Roy asked Secretary French for confirmation. Secretary French said that he would confer with his team and get back to her. Chair Roy offered her bulleted list:

- That AOE has provided a tool to assist with the overall calculation of the census grant and that the report should acknowledge that we might be coming back to the Legislature with recommendations to adjust the calculation based on the Agency’s calculation and that we are still awaiting results of the weighting study, which will have implications on this.
- That the Legislature needs to understand that this is a heavy lift programmatically for schools and the risk of initiative fatigue.
- Extend the IDEA funds so that they can be used for the next school year.
- Highlight the agreement on the high-level construct on how to fund special education at independent schools and acknowledge the disagreement on the definition of large and small schools.
- That the Legislature needs to understand that this group will look at numbers and data and continue to have conversations and make needed adjustments.

Chair Roy asked what might be missing. Mace suggested background - stating how many times the Advisory Group met and what information was received from the AOE, not including the technical correction from Byrne as there was not time to give that proper consideration. It was suggested to include how the AOE has addressed the rulemaking process and staffing of teams and work completed thus far. Mahusky offered that there was not agreement that there shouldn’t be rules relative to delivery of special education as it connects to MTSS. Fannon added that an extension of time would have been helpful and that there are timing implications. Bisbee offered that the professional development subcommittee felt strongly that funding and technical assistance should be targeted and not be first come, first served.

Mace moved that the Chair be empowered to work with the AOE to finalize the report and check in with individual Advisory Group members, as needed. Fleming seconded. Secretary French supported this. Roy called a vote and the vote passed unanimously.

Roy asked any members with thoughts or other ideas to forward to her directly.

Mace asked that Moore edit his presentation so that VSBA is not characterized as a partner, prior to it being posted on the website.

Opportunity for Public to be Heard

Susan Aranoff, Developmental Disabilities Council, spoke about working with the all-payor model and that all Medicaid services are supposed to come under a spending path, including schools. She was looking for a contact name from the Agency and wondered if this advisory group would be addressing this. She said it is complicated and that it is not too early to be thinking about this.

Fannon asked that this be added to future agendas. Chair Roy asked Byrne for a future conversation about how Medicaid school dollars will be impacted by health care reform. Wilcox agreed that this is an area of concern.

Michael Dooley, Director of East Valley Academy, extended the VT Care Partners Network to the Advisory Group and offered that if there are ever questions of who they are and what they do, he would love to interface with the group. He continued that they are a resource and are involved with the AOE. He expressed that they are not mental health agencies who are trying to figure out how to educate students, but instead are schools that offer therapy.

Chair Roy shared that the next meeting is February 4, 2019 and agenda items include a discussion of the current draft of rules and related questions; update on federal reporting requirements; information about Medicaid and how it will be impacted; the calculation tool; allowable costs per IDEA-B; and the impact of different thresholds on school size.

Chair Roy shared that the March meeting is March 4, the day before Town Meeting Day and asked for a hand survey of availability. Three people indicated that they might not in attendance on March 4. She asked for the pleasure of the group, leaving it or rescheduling. The group agreed to keep the meeting on March 4. The location is still to be determined.

Adjourn

Meeting adjourned at 2:28 p.m.

Meeting minutes prepared by Maureen Gaidys.