

Census-Based Funding Advisory Group Supplemental Report

Subtitle: Act 173 of 2018, Section 9

REPORT

January 8, 2021

**Report to the House and Senate
Committees on Education and
the State Board of Education**

**Submitted by
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Advisory Group**



Legislation

This report is submitted pursuant to [Act 173 of 2018 Sec. 9 \(f\)](#) to the House and Senate Committees on Education and the State Board of Education with “a status of implementation under this act and any recommendations for legislation.”

Background

Act 173

Act 173 of 2018: An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.

The Act changes the funding model for special education from a reimbursement model to a census-based model. This new model allows more flexibility in how funds can be used, simplifies administration of funds at both state and local levels, and aligns with policy priorities, including the opportunities identified in the District Management Group (DMG) report.

The act reinforces Vermont’s commitment to comply with all provisions of the Individuals with Disabilities Education Act (IDEA) with an emphasis on maintaining state and local funding levels. Additionally, the act ensures that all students eligible for special education receive a free and appropriate education in the least restrictive environment in accordance with an Individualized Education Program (IEP).

Charge of the Group

The Act created the Census-Based Funding Advisory Group “to consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.” Specifically, the Group is charged with the following:

- “[A]dvice the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;
- [A]dvice the Agency of Education and supervisory unions on the implementation of this act; and
- [R]ecommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.”

Membership

The Act defines the membership of the Advisory Group as follows:

- The Executive Director of the Vermont Superintendents Association or designee;
- The Executive Director of the Vermont School Boards Association or designee;

- The Executive Director of the Vermont Council of Special Education Administrators or designee;
- The Executive Director of the Vermont Principals' Association or designee;
- The Executive Director of the Vermont Independent Schools Association or designee;
- The Executive Director of the Vermont-National Education Association or designee;
- The Secretary of Education or designee;
- One member selected by the Vermont-National Education Association who is a special education teacher;
- One member selected by the Vermont Association of School Business Officials;
- One member selected by the Vermont Legal Aid Disability Law Project;
- One member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;
- The Commissioner of the Vermont Department of Mental Health or designee;
- One member who represents an approved independent school selected by the Council of Independent Schools; and
- One member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

As of the writing of this report, the Advisory Group has convened 19 times (2018: September 14, October 12, December 3; 2019: January 7, February 4, March 4, April 1, May 6, July 24, September 16, October 7, November 4, December 11; 2020: January 6, February 3, July 13, August 3, November 2, December 7).

Report No. 3 to the Committees on Education and State Board of Education

Introduction

The Advisory Group continues to recognize Act 173 as landmark legislation designed to improve the systems of support (and therefore outcomes) of struggling students in Vermont. The legislation addresses two essential components: high quality systems of support for struggling learners, and a funding structure for special education that allows flexibility to implement the former. Act 173 is much more than a “special education funding overhaul.”

As the General Assembly is aware, the implementation of Act 173 has been delayed twice, both times because of a recognition of the significant work needed in Vermont districts in order to adequately implement the shifts in instruction to better meet the needs of all Vermont learners. Act 173 will continue to require focused attention on the part of the entire educational system, including Superintendents, principals, teachers, curriculum directors, school board members and Agency staff in addition to special education directors. Complicating this already significant work are the impacts of the ongoing COVID19 pandemic - on the Agency, on LEAs and on the state as a whole. The Act 173 Advisory Group believes all students have suffered significant interrupted learning opportunities because of the pandemic, and the impact of the

pandemic has most significantly impacted historically marginalized students - including students of color, those living in poverty and students with disabilities. This magnifies the importance of and need for robust and equitable educational support systems in our schools, including a strong and comprehensive rollout of Act 173.

The Group strives to reach consensus in its work and has been able to adopt unanimous recommendations regarding the draft rules to date, professional development recommendations and other recommendations for the SBE. In the event that consensus cannot be reached, it is the Group's intention to inform the General Assembly regarding the areas of agreement and disagreement.

Advise the SBE on proposed rules

1300/2360 Series (Special Education Funding & Programmatic Rules)

Since February of 2019, the Advisory Group has been engaged in providing input and feedback to the Agency of Education regarding "...the development of proposed rules to implement this act...(pg. 44)". Per its charge, the Group has focused primarily on those areas of the Rules they believe are necessary to implement Act 173. It is understood that various stakeholder organizations also have additional input beyond the scope of the Group's charge, and those individual organizations have provided those comments to the Group as well as directly to the Agency and State Board.

Currently, the 1300 Series (a new series on special education funding) and the 2360 Series are open, and the State Board received public comment through December 31, 2020. This was an extension of the public comment period due to the impacts of the COVID-19 pandemic. The [Report of the Census-Based Funding Advisory Group dated January 15, 2020](#) summarized the lengthy and complex series of conversations about several key areas in the 1300/2360 Series: the definition of special education, the conflating of multiple funding constructs, and the feedback requirements for the development of cost documentation guidance. The current report does not attempt to re-summarize that process, and the 2019 document contains essential background information for those new to the process and may be important to review in order to fully understand where the Advisory Group's position is regarding the current open rules.

It may be important to reiterate here that the Advisory Group made a more global recommendation to the State Board, suggesting that they secure all necessary support to assist in drafting subsequent versions of the Rules. Throughout the 1300/2360 series process, the SBE has at times relied on the revisions proposed by the Advisory Group. While the Group appreciates the willingness of the Board to secure its input, it also recognizes that drafting Rules is beyond its scope as an Advisory Group and makes it challenging to adequately address its other responsibilities under the law. This will continue to be important as the State Board engages in the rulemaking process for the 2200 series.

The Advisory Group also engaged in several discussions about whether there is a need for a specific Rule that requires districts to implement a multi-tiered system of support (MTSS). They acknowledge that although MTSS has been required in Vermont statute for many years, the lack

of accountability has resulted in extreme variability of quality implementation across the state. The Group does wonder whether or not there needs to be a standalone Rule series for MTSS, or whether the variability in implementation can be effectively managed by increased Agency of Education accountability (Act 173 already requires that the Agency develop policies and procedures regarding MTSS). The Group is in agreement that an MTSS rule does not have a place within the 2360 Series, as MTSS is a general education framework and should not be seen as solely lying within special education. These conversations are ongoing with the State Board of Education.

2200 Series (Independent Schools)

Act 173 requires that the State Board initiate rulemaking on independent school rules by June 2021. In its last report, the Advisory Group acknowledged that significant work would need to be done to inform the development of Rules regarding the funding of special education for students attending independent schools. There was significant discussion about how to approach the development of the Agency draft of the 2200 series rules. The Advisory Group and the Agency hoped to devise a process that would allow more real-time, “back and forth” input into the initial draft, in order to avoid some of the challenges that occurred with the 1300/2360 series process. The Agency recommended, and the Advisory Group supported, the convening of a stakeholder group to inform the initial Agency draft of the 2200 Series rules.

The stakeholder group included representatives from Vermont independent schools as well as special education directors. It met four times over the course of the Fall and worked directly with Agency staff to provide input and feedback on their draft. The Agency then presented those drafts for discussion to the full Advisory Group at their November and December meetings. This process proved to be useful in gaining consensus on key issues relative to the draft rules. At the December 7, 2020 Advisory Group meeting, the Group gave its preliminary support to the Agency draft of the 2200 Series, which is inclusive of the input and feedback from the Group during that meeting.

In addition, there was discussion about the need for further development of rules surrounding the rate setting process for therapeutic independent schools. It is the opinion of the Advisory Group that this critical element of 2200 series rulemaking is related to implementation of Act 173, in that costs of therapeutic independent schools are largely borne by LEA special education budgets. In keeping with the largely successful input process for the 2200 series, the Agency intends to continue the convening of a stakeholder group in the early months of 2021 in order to provide input toward the rate setting rules. This group, in turn, will report back to the Advisory Group for further discussion and input. It is the intention of the Advisory Group to have fully informed this process prior to the Agency’s “final” draft being presented to the State Board in June for initiation of rulemaking.

Advise AOE and supervisory unions on implementation

Professional Development

The Advisory Group has long acknowledged that the programmatic element of Act 173 represents a significant and fundamental implementation challenge for LEAs in Vermont. Though the implementation of systems of support in general (and MTSS in particular) have been in Vermont statute for decades, the specificity and expectation of Act 173 to provide systems of support for all struggling learners is significant. As such, the Advisory Group recognizes that sustained, high quality professional development will be critical to the successful implementation of the Act.

To date, the Advisory Group has had the opportunity to hear from and provide input to the Agency of Education regarding their general professional development approach to supporting school districts in the implementation of Act 173. In 2019, the Agency shared an [overarching Framework document](#) outlining what it identifies as key “systems levers” for successful implementation. The framing document was intended to be followed by sub-documents providing additional detail to districts. Those sub-framing documents include [Educational Support Teams in School District Systems](#), [Coordinated Curriculum in School District Systems](#), and [Local Comprehensive Assessment Systems in School District Systems](#).

The Advisory Group certainly agrees conceptually that the levers identified in the Framing Document are critical for successful implementation of the Act. However, the Advisory Group has repeatedly noted that the Framing Document needs to be accompanied by a coordinated, well designed and consistent plan for how the Agency will support Districts in implementation - this level of planning has not been presented to the Group to date. Without this level of support provided to districts, the Advisory Group believes that Act 173 will result in decreased state-level funding for special education for many districts *without* the required systems change needed to enact the programmatic elements of the legislation. The Advisory Group recommends a targeted approach to professional learning resources that will prioritize support to districts most in need of support based on identified metrics. The Group would also reiterate its support of the recommendations that came out of the October 2019 stakeholder convening by the VSA and VPA and was issued in [the VSA/VPA Act 173 Professional Development Report](#). This work is included here because it captures a number of the recommendations that the Advisory Group had informally discussed over the course of the year.

In order to further discussions about specific professional learning plans, the Agency has convened a subgroup focused on professional learning, comprised of members (or designees) of the Advisory Group. The subcommittee includes representatives from VT-NEA, VCSEA, VPA, VTCLA (VT Curriculum Leaders Association), VISA and the Disability Law Project and has convened once this Fall. The intention is for this group to work closely with the Agency and bring more formalized recommendations to the full Advisory Group.

Collaboration with Agency of Human Services

The Department of Mental Health (DMH) has been a member of the Act 173 Advisory Group since its inception. DMH appreciates the collaboration to think as a whole system about how Act 173 special education funding changes will impact school-based mental health services. At this time, DMH anticipates likely impacts on the therapeutic independent schools (run by several mental health agencies) and school-based mental health services funded through Success Beyond Six (SB6) Medicaid. The Agency of Education and DMH see the need to stay connected with the work of the Act 173 Advisory Group and the parallel DMH efforts to review the school mental health system under SB6 Medicaid. DMH continues to prioritize delivery system and payment reform for SB6, including a shift from fee-for-service funding to an alternative payment model such as case rates for school mental health services. As each of these fiscal structures is redesigned, it is essential to understand how these funding shifts across education and mental health impact one another. Each has a goal for more flexibility in service delivery and enhancement of supports to address the social, emotional, and mental health needs of students. It remains unclear what these specific impacts may look like and thus how to best address potential areas of concern. DMH and the Advisory Group seek to ensure that any changes to funding structures do not seriously disrupt the school mental health system; it is essential to ensure the most vulnerable students do not experience any interruption in their supports. There continue to be opportunities for shared learning to better understand potential impacts. In the fall of 2020, DMH presented an overview of Success Beyond Six services to the Advisory Group to share the work that is underway with SB6. Additionally, the leadership of AOE and DMH continue to meet to discuss progress of the initiatives and to ensure that action undertaken to improve SB6 is informed by the ongoing work under Act 173 and vice versa.

Recommendations to General Assembly for Necessary Statutory changes

The Advisory Group is required to make recommendations for any necessary statutory changes to the Act. The Advisory Group has identified a small number of areas in which the GA should consider statutory changes.

Language changes

During the 2200 series rulemaking process, the subcommittee and the Agency identified language in Act 173 that they believe is in conflict with Federal dispute resolution requirements under IDEA. This was identified when the language was included in a draft set of Rules and was identified as an area of concern by the stakeholder group. Upon further investigation, it was discovered that the language is derived directly from the statute, and therefore requires legislative adjustment.

The language at question is in Section 2973(d)(2)(B) of the Act, which states: “no private right of action shall be created on the part of the student or his or her family members, or any other private party...” It is the opinion of the Advisory Group that this statement is in conflict with parental due process rights entitled to families under IDEA; it is our understanding that the Agency concurs with this opinion. The Advisory Group’s recommendation is that this language be removed altogether.

Weighting Study

At the January 2020 meeting, the Advisory Group heard a presentation by the lead author of the weighting study that was convened as part of Act 173. As the GA is aware, the information presented in the study is significant and complex. The Advisory Group focused their discussion on the interplay between the overall changes to equalized pupil calculations that were recommended and the specific changes that could be made to how the census-based grant is calculated.

The most significant finding in the study is the acknowledgement that a census-based funding model assumes that school districts have roughly similar rates of students with disabilities - and yet in Vermont, there is significant variability across districts, creating the potential for inequitable special education funding in schools. Dr. Kolbe also reminded the group that in fact we really don't know how this would play out until the model is implemented.

More recently, discussions about the implications of the weighting study have begun in earnest and the Advisory Group is aware that the General Assembly is likely to take up the issue during this session. Implementation of any weighting study recommendations are relevant to discussions of Act 173 and the calculation of the census grant. Therefore the Advisory Group recommends that it be involved in some way with discussions as they unfold, including being given an opportunity to review and provide input into proposed legislation.

Continued financial support for implementation

Act 173 includes a requirement that the Agency use a portion of existing Federal grants to support implementation through the end of FY21. The Advisory Group recommends extending this timeline, requiring the Agency to set aside IDEA funds for, at minimum, FY21, FY22, FY23 (extending the current recommendation of FY19, F20, F21).

Hold on additional legislation

The Group continues to agree that Act 173 represents landmark legislation for schools, and passage of additional education legislation that requires districts to shift their focus again will put implementation of the Act in jeopardy. The Advisory Group understands that legislation related to education funding and the weighting study may be necessary, but does not recommend additional programmatic legislation at this time.

Submitted on behalf of the advisory group by:

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