



Wednesday, August 16, 2023
Virtual via Microsoft Teams
Call-in Number: 1-802-828-7667
Conference ID: 858 571 771#

State Board of Education Rule Series 2200 Committee

Draft Meeting Minutes

Present: Chair Samuelson, Tom Lovett, Kimberly Gleason

Others: Sarah Buxton, Attorney; Mill Moore, Vermont Independent Schools Association

Agency of Education (AOE): Maureen Gaidys

Call to Order, Roll Call, and Amendments to the Agenda

Chair Samuelson called the meeting to order at 12:03 pm. and took roll call. She suggested that the agenda be amended so that executive session occurred after the first public comment period and before the working session. There were no objections.

Approval of [August 4, 2023](#) and [August 7, 2023 Minutes](#)

Lovett moved to approve the August 4, 2023 minutes; Gleason seconded. There was no discussion. Chair Samuelson called the vote. The minutes were approved. Lovett moved to approve the August 7, 2023 minutes; Gleason seconded. There was no discussion. Chair Samuelson called the vote. The minutes were approved.

Public to be Heard

There were no members of the public who wished to be heard.

Executive Session

Chair Samuelson moved that the Board finds that premature general public knowledge of confidential attorney client communications made for the purpose of providing professional legal services to the body would clearly place the Board at substantial disadvantage. Lovett seconded the motion. Chair Samuelson called the vote; the motion passed unanimously.

Chair Samuelson further moved that the Board go into executive session to receive confidential attorney client communications made for the purpose of providing professional legal services to the body pursuant to 1 V.S.A. §313(a)(1)(F). Lovett seconded the motion. There was no discussion. Chair Samuelson called the vote; the vote passed unanimously,

The Committee entered executive session at 12:13 p.m. The Committee returned to the regular meeting at 1:13 p.m.

Working Session

Buxton explained that the executive session was used to provide legal counsel and advice to the Committee. She noted that there might be some potential unintended consequences with two sections of language in the current drafted rules and she identified two major risks that the Board and local implementors of these rules might face if this language is not changed. The language involved the current definition of discrimination in the definitions section and in the statement of purpose section, 2220 (third paragraph). She cautioned that a plain reading of those sections might have two issues: 1) they could be read to expand the number of protected classes and would exceed what current state and federal law provide and, if that is the case, could be potential sources of litigation and 2) that this might create ambiguity in the application of the rules. The more expanded definition may cause some confusion and could be interpreted to exclude things such as French Club, Girls on the Run, etc. The Committee is likely to discuss some remedies to these challenges.

Buxton's first suggestion is to modify the current definition of discrimination as follows: Discrimination is intended to describe any exclusion, restriction or preference based on any protected class, consistent with state and federal law, which has the purpose or effect of denying or impairing the recognition, enjoyment, or exercise of an individual's fundamental rights. Discrimination is practiced by individuals and groups and is expressed systematically through the structures, laws, practices and policies of public and private institutions, employers, and organizations.

Buxton's second suggestion is to modify the Statement of Purpose by eliminating the current third paragraph and replacing it with the following two paragraphs:

The Board believes that any distinction, exclusion, classification, restriction, or preference based on any ground such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying, impairing the recognition, enjoyment, or exercise of fundamental rights and freedoms, and the political, economic, social, cultural, civil, and any other field should be carefully considered and rejected if it results in unlawful discrimination or interferes with the delivery of effective, available and equitable educational opportunities.

Discrimination is practiced by individuals and groups and is expressed systematically through the structures, laws, practices and policies of public and private institutions, employers, and organizations.

There was discussion on the first paragraph of suggested change to Scope of Work, whether the second sentence from the definition should be repeated at the end of the first paragraph of the Scope of Work. Committee changed to "recognizes."

Chair Samuelson suggested going through the [latest draft of Rule Series 2200 - Independent School Program Approval - Marked Up Copy \(August 14, 2023\)](#) page by page to address changes made and comments/edits provided by SBE members. There was discussion on: the effective dates (section 2276), capturing the essence of Act 1, concern with giving responsibility/authority for Vermont-specific compliance with laws to accrediting agencies, creating AOE-developed rubric for assessing compliance with nondiscrimination laws/rules, examples of evidence of compliance, flexibility for AOE to ask for and review information gathered by accrediting agencies, not wanting to be too prescriptive

in asking AOE for a rubric for the AOE but instead wanting the AOE to develop a standardized process to ensure compliance with non-discrimination, self-assessment, annual attestation, accrediting agency collecting evidence that is typically provided to AOE, not wanting an accrediting agency to exercise subjectivity, and review of section 2224.2.1 and 2224.2.2.

Buxton reported back on conversations with the AOE on whether an “addendum/appendix” is or will be used to review Vermont specific compliance items. AOE confirmed that the AOE does not have a specific agency-developed addendum that they use when doing their report; they are aware of the New England Association of School and Colleges (NEASC) rubric. Buxton said the question of directing the AOE to make an appendix that is Vermont specific might be moot given committee decision to use the annual compliance assurance approach, noting that it also now would include the self-assessment using the Agency developed process. Buxton said she also spoke with the AOE about proposing a specific date for an annual compliance assurance in the rules. There was not an explicit rejection of having a date set, nor did the AOE provide her with a suggested date. She asked if the Committee wanted to set a date specific and, if so, what that should be. There was discussion on a date specific being on or before January 15.

There was discussion on other suggested edits from SBE members, changing language in section 2223.3.4(d) to read “State of Vermont, Department of Public Safety, Vermont Crime Information Center Sex Offender Registry”, replacing “Secretary” with “Agency or designee” where appropriate and not requiring the language to say “Secretary” unless required, adding language pulled from the accrediting agency criteria to require that all schools going through the approval process must promote an equitable, just, and inclusive community, and additional discussion to follow at Friday’s Special meeting that will prompt further consideration.

Vote – Rule Series 2200

Chair Samuelson moved that the current version discussed by Committee be approved and brought before the full SBE at a special meeting on August 18, 2023 for its discussion and approval; Gleason seconded. There was discussion on minor changes. Chair Samuelson withdrew her motion. Chair Samuelson moved that the version of the proposed updates to the Rule Series 2200 as discussed at today’s meeting, and with the additional final work to be done by Attorney Buxton, as discussed and approved by the Committee at this meeting, be approved and brought before the full SBE at a special meeting on August 18, 2023 for its discussion and approval so that the SBE can move forward with the formal Administrative Procedures Act (APA) rulemaking process. Gleason seconded the motion. Chair Samuelson called the vote. The vote passed unanimously.

Chair Samuelson praised the work of Committee members, and acknowledged the thoughtfulness, comprehensiveness, and fairness of this work product. She said the process and the feedback provided was most helpful. Gleason said that the Committee might be well served to acknowledge that the process has been accelerated in the pursuit of doing their best to align process with Education Quality Standards (EQS) and that there will be ample opportunity for additional feedback during the public comment period. Chair Samuelson agreed and commented that the Committee was at an advantage to have the good work of the Act 1 Working Group and the EQS Committee completed, which, in turn, facilitated the work of this Committee. There was discussion on detailing the rulemaking process with the full SBE.

Adjourn

Lovett moved to adjourn; Gleason seconded. The meeting adjourned at 3:10 p.m.

Meeting minutes prepared by: Maureen Gaidys