

## APPROVED MINUTES

**Meeting Place:** College of Fine Arts (CAPS)

**Address:** 32 College Street, Montpelier, VT 05602

**Date:** Thursday: April 18, 2019 (9:30 a.m. to 2:30 p.m.)

**Present:** Troy McAllister, Sherrie Brunelle, Mary Barton, Joy Wilcox, Nancy Richards, Mill Moore, John Spinney (AOE Liaison), Chris Case (AOE), Judy Cutler (AOE Legal), Dan French (AOE Secretary), Philip Eller (Guest), Disa Tatro (Guest)

### Agenda:

- 9:30-9:40 Introductions
- 9:40-9:50 Review/Revise/Approve Agenda
- 9:50-10:00 Public Comments
- 10:00-10:15 Approve Minutes for:
- September 20, 2018
  - March 21, 2019
- 10:15-10:30 AOE Update
- 10:30-11:00 Review Draft Proficiency Based Graduation Requirement (PBGR) Access Plan
- 11:00-12:15 Discussion with Secretary French
- 12:15-12:45 Break
- 12:45-1:30 Legislative Update/H140
- 1:30-2:20 Act 173 Update/Rule Making
- 2:20-2:30 Other Business
- Next steps,
  - Agenda May 16, 2019
- 2:30 Adjourn

### Introductions/Call to Order:

Meeting was called to order by Chair, Troy McAllister, at 9:30 a.m. who noted a quorum in attendance. He then advised the Council that Tara Howe has resigned from the Council. He further announced that the Governor had appointed seven (7) new members to the Council, five (5) of whom were current or former special education administrators. Members raised concerns about the number of special education administrators appointed given the Council composition requirement and asked if that would be on the agenda. The Chair preferred not to address this issue at this meeting because his contacts thus far have reflected some miscommunication issues that he was still sorting out with the AOE and Governor's office. However, he would discuss the issue if the Council was so inclined. Members deferred to the Chair's recommendation with the knowledge that the issue is being addressed.

## **Approve Agenda:**

The Chair advised the Council of the need to revise the agenda to move the discussion of Act 173 and related rulemaking to the morning agenda to accommodate the schedule of Judy Cutler. Agenda modified as recommended.

## **Public Comment:**

No response to invitation for public comment.

## **Approval of Minutes:**

As secretary for the Council, Sherrie had distributed, prior to the meeting, a document that differentiated between typographical errors in need of correction and questions related to substantive content for each set of minutes. She had recommended that, to facilitate the process, the Council consider approval of the technical corrections for the September and March meetings by a single separate action leaving time for discussion of substantive content needing input/clarification. The Chair treated the recommendation as a motion, seconded by Mary. Motion carried by unanimous vote.

## **September 20, 2019 Minutes:**

- Implications of Act 173-Service Delivery: Deleted sentence beginning “Troy emailed details.”
- Discussion of Adverse Effect: Deleted incomplete first sentence. Joy clarified that the stakeholder group agreed that there was a need to go beyond looking at the adverse effect criterion of the eligibility rules to looking at the eligibility determination process in its entirety.
- Priorities: Troy clarified that the first bullet should reflect the priority as “improving the Council’s relationship with the AOE and State Board of Education.”

Mary moved and Joy seconded approval of the September minutes as corrected. Motion carried by unanimous vote.

**March 21, 2019 Minutes:** Approval of minutes tabled until Nancy Richard’s arrival. Upon her arrival, the minutes were revised to reflect Nancy’s statement related to a situation with a guidance counselor where there was a representation by the counselor that a PLP and MYP are the same thing. With that revision the March minutes were approved by unanimous vote.

## **AOE Updates-Staffing:**

- Chris Case was promoted to the position of Director of the Division for Student Support Services. Chris was congratulated and welcomed to the Council meeting.
- Chris Kane was promoted to manager of program services. Philip Eller asked if Chris K. remains the contact person for students with Autism. Chris C. confirmed that he is for now.
- Jacqueline Kelleher has accepted the position of State Director of Special Education. She has a broad base of experience in special education and is also a parent of a child with a disability. Her start date is May 26th. A formal announcement is expected this week.
- Tonya Rutkowski continues as the Monitoring Coordinator. There will be some crosswalk between monitoring and accountability agency-wide.
- Still looking at filling a number of positions resulting from retirements and promotions. Chris C. reported that they advertised and re-advertised some of the positions without success. Joy asked

whether the problem is related to an insufficient pool of qualified applicants or no interest in the position. Chris C. said it's unclear, but they are now looking at what they can do to encourage more applicants.

Chris C. reported that the AOE is undergoing a period of restructuring. They are looking at past systems and looking at creating more comprehensive and effective systems within the overarching MTSS approach adopted by the AOE and consistent with the expectations of Act 173. This includes special education and other components of the AOE. The goal is fewer silos and a more integrated system. Joy commented and other members concurred that while this has been a challenging time for the AOE, it also presents a great opportunity.

### **AOE Updates-Program:**

**Project Search:** John reported on developments related to Project Search, a work-based learning opportunity for students with intellectual disabilities in their senior year of high school. The program was piloted at Rutland Regional Hospital. The majority of students completing this program got a job in the first year of the pilot. This past year there were not enough students enrolled to keep costs reasonable for districts. So, young adults served by area developmental services providers were invited to participate. Historically, a school district has served as the fiscal agent for the program, but that has been difficult for them which puts the program in limbo. Discussions are underway to have Castleton University act as the fiscal agent. Rutland Regional remains enthusiastic about offering the program. For now, the program will be offered to students and adults.

The UVM Medical Center was approached as a new site for the program, but that effort was not as successful. After agreeing to offer the program, the UVMMC advised that it was cutting the program leaving five (5) students who had applied and were accepted for the program in limbo. AOE ultimately was successful in keeping the program in place for the enrolled students once UVMMC became aware of the disruptive impact of its decision on the education and lives of enrolled students. Enrolled students will participate in three (3) ten-week internships.

It's not clear why enrollment is down. It could be, in part, related to the development of robust in-district transition programs. There are no plans to expand the program to other hospital sites. Members suggested that approaching smaller community based hospitals might be more successful than a large facility like UVMMC. It would be nice to see a program in other parts of the state.

**Collaboration with the Advisory:** Chris C. advised that he looks forward to collaborating more with the Council. He acknowledged that this is an area in need of improvement and that the AOE had not reliably sought Council input where required by IDEA. Toward that end, he is working with Troy to create some templates for feedback from the Council on issues of concern and required activities. These were distributed to members prior to the meeting and any feedback is welcome.

Further updates were tabled to accommodate Judy Cutler's arrival to discuss rulemaking under Act 173.

### **Act 173 Rulemaking:**

Judy Cutler from the AOE legal division joined the Council meeting. She explained that her role/responsibilities have changed over time with the AOE. She is currently the lead on rulemaking related to Act 173. Troy noted that Members were sent copies of the special education rules in total which includes

a range of technical corrections. Members were also sent a draft of the new proposed rule 1300 related to special education funding. Judy commented that following a meeting with the State Board yesterday, she realized that she had not provided a copy of the red-line revisions to rule 2366 and distributed a copy to the Council.

Sherrie asked why the AOE chose to excerpt special education funding from the special education rules rather than amend that section within the rules. Judy explained that the AOE decided a separate rule was needed for several reasons:

- The purpose of Act 173 is on more than students eligible for special education. It applies to all struggling learners. Therefore, it's inappropriate to include funding under Act 173 within the special education rules only.
- The statute directs the AOE to create rules specific to the Act. Given the short timeline for developing these rules, it is not feasible for the AOE to look at changes to the special education rules in total. The priority must be on the funding rules.
- Implementation of Act 173 is a culture shift for schools, some are more advanced than others in implementation of the principles of the Act. Accordingly, the funding rules are likely to need revision based on outcomes from implementation of Act 173 in the field. By creating a separate rule, the AOE would be able to revise the funding rules without having to open the full special education rules in the future.

**Rulemaking Process:** In response to questions, Judy reviewed the overall rulemaking process and -

- Reported that the State Board took no action on the AOE proposed funding rules at its April 17<sup>th</sup> meeting. They are grappling with proposed delay under consideration by the legislature.
- Acknowledged that once any specific special education rule is opened for revision, the entirety of the rules are open for revision. Members of the public and organizations will be free to make recommendations for revisions not proposed by the AOE. The AOE must respond to other proposed changes in accordance with the rulemaking statute.
- Acknowledged that the funding rules must be consistent with federal law.
- Noted that the proposed rule is not part of other funding rules within the *State Board Manual of Rules and Practices*. It is a stand-alone rule.
- Noted that while some express concerns about the lack of detail in the proposed rules (e.g., a more detailed definitions of terms like "student requiring additional support"), the AOE was inclined to keep the rules broad so it can adjust them over the five (5) year implementation of Act 173. At this point the AOE prefers to provide "guidance" regarding certain provisions rather than codify them in a rule.
- Noted that the AOE rulemaking team has some challenging decision points ahead including –
  - The level of detail within rules
  - What fiscal program monitoring will look like
  - Implications of funding rules on other aspects of the rules, e.g., tuition
- Noted that the rulemaking team at the AOE, other than herself, included Emily Byrne, AOE Chief Financial Officer, Tom Faris, MTSS Division Coordinator, Susan Marks, external special education

and legal consultant, and AOE general counsel, Clare O'Shaughnessy. Sherrie advised that information regarding the [rulemaking process](#) is available on the AOE website..

**Member Questions about Rulemaking Process:** Troy had concerns related to deletion of Corrections Education from the proposed rules and asked who to contact. Chris C. suggested use of the new template and then submit concern to Judy via the Council. Troy clarified that he was not asking as a member of the Council, he was asking in his professional capacity. Judy is appropriate contact prior to the formal public comment period. Troy can also present to the State Board.

Mill expressed concern about the process. Will AOE be taking back and resubmitting revised proposed rules to State Board? Judy responded that revisions will occur throughout the process. Mechanisms for comment include comment to AOE, at State Board meetings, and throughout the formal public comment period where there will be at least one public hearing and an opportunity for written comment.

Troy asked about the AOE's planned process for responding to public comment (e.g., written responses). Chris C. advised that there are various ways that the AOE can do this, but there is no decision in that regard as of yet.

Nancy asked whether the Act 173 Advisory have been provided the most recent revisions to the rules. Judy confirmed that they have not.

Mill advised the Council that he had testified that the Act 173 Advisory request for a one year delay was a good idea, but it's not enough.

**Technical Assistance for Professional Learning (TAPL):** Chris C. reported that the AOE is actively involved in assisting schools with the culture shift inherent in full implementation of Act 173 and needed professional development. But this is a shared burden and work needs to be done at the local level as well. At the AOE they are already integrating Act 173 requirements into the State Continuous Improvement Process (SCIP). He provided a quick overview of what they are currently doing and said he'd be happy to come back and do a presentation for the Council, if desired. Joy commented that this described approach fits right in with the MTSS process of tailoring of supports to individual needs of the student.

**Communication Website:** Chris explained that the AOE expects its communication website to up by April 24 th. Joy asked how this website will differ from the current AOE website. Chris responded that the focus will be on implementation of Act 173 rather than rulemaking. AOE is trying to be more aware and responsive to individuals versus groups in public comment process.

### **Discussion with Secretary French:**

Secretary French advised the Council that he had just testified before the legislature regarding Act 173 and provided Members with a copy of his testimony. His recommendation was to continue the current funding rules for one year and in that time provide school districts with a tool/roadmap on how to reach full implementation within the 2025 timeline established by Act 173. He reported that this was a very difficult and challenging decision, made in consultation with stakeholders. But a one year delay is the prudent decision given multiple factors: current AOE capacity, including 23 vacant positions (some due to promotions within the AOE), loss of key special education leadership positions, other major policy initiatives negatively impacting the field (Act 46, Act 77, Act 166) and the AOE's implementation of three (3)

large statewide data systems. A particular benefit of a delay would be time to address professional development concerns.

Joy asked Secretary French to share his vision for the AOE. Secretary French referenced his “Blueprint for Education” broadly and identified specific goals to include:

- Developing a coherent education system with quality data to measure outcomes of VT’s quality education standards
- Provide leadership on complex issues
- Creating a structure for analyzing the complexity of initiatives that complicate attaining intended goals.

Referencing the Council’s letter to the Secretary, Troy asked about the Secretary’s response to the recommendation that the State Director of Special Education (SDSE) be a part of the AOE leadership or management team. Secretary French advised that, for now, the position will remain in the current structure. This may change overtime. He assured the Council, however, that the person in that position will be “tied to his hip.” He went on to describe his belief that an effective system is dependent on hiring highly skilled program managers who work collaboratively with highly knowledgeable staff. The Secretary spoke of the newly hired SDSE. She absolutely has the technical skills for the position, but she also shares the philosophy of access and equality in education and inclusion of students with disabilities.

Troy then asked the Secretary how the Council can help him going forward. The Secretary noted that the role of the Council under the statute is critical and he looks forward to an improved relationship with the Council. He stated that it is important to keep the lines of communication open. He acknowledged that parents are not well represented and he welcomes suggestions about how to efficiently gather that input. He further noted that the State Board has indicated an interest in more involvement with the Council. The Secretary was thanked for his time and the meeting adjourned for a break.

The Chair called the meeting to order at 1:00 p.m. to address the remainder of the agenda.

### **Review/Discuss OSEP Report Schedule:**

Neither John nor Chris C. had this information. Troy will talk with Chris C. about the schedule of OSEP reports that the Council is required to review so that it is available for the next meeting.

### **Legislative Update/H.140:**

Troy reported that there is not much to report regarding H.140. The Senate Education Committee eliminated much of the detail from the House version, a copy of which was sent to Members. Elements that appear consistent in both versions include requirements for fewer meetings, establishment of an Executive Committee, stand-alone membership for the IDEA mandated parent training & information center and the designated VT Protection & Advocacy organization. It also maintains the prohibition against members serving in professional and non-professional roles at the same time.

**Membership of Council:** Troy reported that he had an opportunity to speak with Chris C. during the break and advised the Council that there has been miscommunication and misunderstanding between the AOE and Governor’s office. The Governor’s office does not review applicants for appointment to determine what category of Council membership each seeks to fulfill. It assumed that all names submitted were within the participant categories designated under the statute. As a result, all recent applicants were

approved, five of which are special education administrators. It is currently unclear how the problem will be resolved. Troy will continue his efforts toward resolution. Going forward, the Council and AOE will develop a process for reviewing applicants to ensure the proper composition of Council members.

Following this discussion Troy left the meeting and Sherrie assumed the Chair's responsibilities.

### **PBGR Access Plan:**

John advised that, unlike some states, Vermont does not award differing diplomas for students, particularly those with disabilities. He noted that the PBGR Access Plan replaces the previous Multi-Year Plan which allowed certain students with disabilities to modify graduation credit requirements. This year is the first year that students will graduate based on proficiency-based graduation requirements (PBGR) instead of credits. Some students will need modification of those proficiencies due to their disabilities. The plan distributed is the latest draft of the PBGR Access Plan.

Sherrie asked about potential problems related to the ability of school districts to set their own proficiencies which may not be the same as those in another district. This could be particularly problematic for students moving from one district to another. John agreed and noted that some districts attach proficiencies to specific classes that a student with a disability might not attend. These are issues the AOE will need to address. John noted that the Access Plan will look at modifying the performance indicator within a proficiency listed in the Education Quality Standards (EQS) set forth in the rules. For schools offering universal design instruction, there may be no need for an Access Plan.

Disa asked how parents become aware of this plan. John said if on IEP, would be discussed in an IEP meeting. Though not technically a requirement of special education, the Plan would be attached to IEP. Some students needing an Access Plan may not be special education eligible. The plan is not a "required form" for special education purposes. It is a recommended form. Districts might create their own form that includes the same content.

Nancy reported a situation where a student was told that he would not progress to 9th grade because he had not passed 8th grade proficiencies. John asked that Members send him the names of schools where there are issues related to the PBGR Access Plan and EQS proficiencies. The AOE is in the process of evaluating equity issues.

John noted that the AOE is not moving forward with the plan to conduct a survey regarding dual-enrollment because they already know the outcome. Students with disabilities are not accessing this opportunity. They see the same issue with technical education.

### **AOE Updates Continued:**

John advised the Council that the AOE-

- Has a link on its website to a newly developed professional learning series created by Leeann Jung. The series uses student scenarios to address the interplay and differences between PLPs, IEPs, PBGRs in transition planning.
- Is creating a template/tool related to Flexible Pathways to graduation intended to ensure greater access for individual students and equity school-wide. He'd like to bring it to the Council for input.

- Is encouraging school districts to identify/create a position for a central work-based learning coordinator with endorsement credential. Veronica Newton in general education is lead for this initiative. He also noted that schools may choose to contract with the VT Association for Business, Industry and Rehabilitation (VABIR) for employment based supports.

### **Other Business:**

**AOE Memo on Initial Evaluations and Reevaluations:** Joy advised that the recent memo related to contains an error. It makes reference to age peers when eligibility for special education is based on grade peers. The last sentence on page 1 doesn't make sense and should be deleted. Mary also noted the Notice of Decision forms (7 and 7a) have been excluded from the list of required forms in the recently distributed memo. They are critical forms and need to be included. Mary commented that this is helpful guidance for educators in the field. The Council recommended that the AOE issue a corrected memo.

**Getting Information to Special Educators:** The Council discussed ongoing concerns about getting important information to front line educators who are not part of an organized lobbying group. Information provided administrators does not get down to the staff. John asked about creating a listserv for special educators. Members felt that was problematic because it would be quickly out of date given turnover in the field. John is open to any suggestions.

**Assessments:** Sherrie asked if John could provide a resource for good transition assessments. He used to maintain a list but now refers folks to ENTAC. Members also asked about the status of alternate assessments. John reported that Linda Moreno is the contact person. AOE expects the new assessment will start being implemented this year, but he's not sure if it will be statewide.

### **Next Steps:**

- Troy will follow-up with the AOE and Governor's Office regarding recent Council appointments
- Troy will get the OSEP report schedule in consultation with Chris Case

### **Agenda May 16, 2019 Meeting:**

1. Introductions/Call to Order
2. Public Comment
3. Review and Approve Agenda
4. Public Comment
5. Approve Minutes for April 18, 2019 Meeting
6. AOE Updates
7. Legislative Update/H140
8. Act 173 Update/Rulemaking
9. Other Business
  - Next steps
  - Agenda June 20, 2019

**Meeting Schedule (hold the date):** June 20, 2019