

## State Board of Education

### Approved Meeting Minutes

**Meeting Place: Virtual Teams Meeting/Video/Teleconference**

**Call in #: 1-802-552-8456, Conference ID: 782 665 827#**

**Date: October 21, 2020**

#### **Present:**

**State Board Members (Board):** John Carroll, Chair; Jenna O'Farrell, Vice Chair; William Mathis; Kim Gleason; Sabina Brochu; Kathy Lavoie; Oliver Olsen; Jennifer Samuelson; Angelita Peña and Dan French.

**Agency of Education (AOE):** Deborah Ormsbee, Pat Pallas Gray, Emily Simmons, Donna Russo-Savage, Maureen Gaidys, Ted Fisher, Suzanne Sprague

**Others:** Chris Kramer, Harry Street, Kim Dougherty, Stacy Rice, Gary Karnedy, Steve Harrison, Susan Kessler

#### **Item A: Call to Order/Roll Call/Introductions/Amendments to Agenda**

Chair Carroll called the meeting to order at 9:06 a.m.

#### **Item B: Consent Agenda/Board Announcements/Student Report**

##### Consent Agenda:

Chair Carroll asked for a motion to approve the consent agenda items which include the minutes from the September 16, 2020 meeting and closure of the Vermont Assessment Center at Newbury House. Lavoie moved to approve the consent agenda as presented; Mathis seconded. The motion passed.

#### **Item C: Board Announcements, Student Reports**

##### Board Announcements:

None

##### Student Report:

Brochu requested an extension regarding the presentation on the data collected by the student network. She said additional time was needed to analyze the data and to present it in a way that was beneficial to the State Board. Brochu will ask for time to present the findings at the November meeting. She said the work has been positive. Brochu said that her school has a sense of normalcy with their schedules and new way of learning. She said there was a great community that supports each other at Champlain Valley Union High School. Teachers are making a genuine effort to understand the mental health of each student.

Peña said that her school experience was the same as Brochu's. It has become more normal. Peña said that several things still require attention such a frequent hand sanitation. She and Brochu will go into further detail during their presentation at the November meeting.

### **Item D: Public to be Heard**

Chris Kramer, co-chair of Friends of Cornwall School, addressed the State Board. He spoke of school consolidation during the Act 46 process and how the schools in his district voted to merge into the Addison Central School District. He said school closure was not the focus of merging and that districts were to seek other ways to achieve efficiency and equity. Post-merger, the discussion has moved to school closure discussion and a consultant was hired and recommended closing 4 of the 7 schools. There was no provision in their articles of agreement that would require a vote of a town to approve the closure prior to closing a school. They have petitioned their board to warn the voters of a change to the articles of agreement that would have inserted that requirement and unfortunately, the board chose not to warn it to the voters. The board has indicated that a draft plan to close the schools will be ready by the end of the calendar year and that voters will vote on the plan at Town Meeting. They voluntarily merged and the four towns where the schools are recommended to close are considering a withdrawal from the Addison Central Unified Union School District.

Kim Dougherty, Angus Wagstaff, PC – requested to address the State Board. Chair Carroll advised that an opportunity to address the State Board would be given during Item H.

### **Item E: Chair's Report**

Chair Carroll said that he supplied State Board members with a proposed communication to be sent to Senator Baruth, Chair, Senate Education Committee and Representative Webb, Chair, House Education Committee, regarding the provision in statute, 16 V.S.A. § 721(a), which allows school districts that are not members of union school districts to withdraw from union school districts if one year has elapsed since the union school district has become a body politic and whether the provision aligns with the intent of Act 46. He read the letter. Chair Carroll asked for comments from the State Board members. Hearing no edits, Chair Carroll will send the letter as drafted to both chairs.

Chair Carroll reminded the State Board that in January 2021, it will go back to the General Assembly to renew its initiative to clarify the different roles of the State Board and the Agency of Education.

### **Item F: Secretary's Report**

Secretary French said that he would confine his report to COVID-19 related topics. He said that the Strong and Healthy Start Guidance for reopening schools was undergoing a revision. He expected it to be released within the week. The revisions mostly adapt to current conditions. Guidance on winter sports will be released in the next week. Secretary French said that things are going well. The schools stepped up with implementing a fairly complex and logistical health consideration in order to operate schools safely. He added that there were increasing conversations around schools operating in the current context for the remainder of the school

year. Travel considerations are a primary concern and guidance on the topic was included in the update so that schools can continue to operate in a safe manner.

### **Item G: Post-secondary Institutions – SBE’s Role**

Emily Simmons, General Counsel, addressed the State Board concerning its rule regarding the approval of post-secondary institutions. She gave a brief overview of the rule and said in order to operate a degree granting institution either in-state or out-of-state, the institution must be reviewed by the Agency of Education. The Secretary of Education would make a recommendation to the State Board for its consideration on whether the institution ought to receive a certificate of approval to operate and then a certificate to provide degree granting authority. Chair Carroll said that the rules reflect the statute and added that the statute is general. Simmons said there was more detail in the rule and if the State Board wants more specificity in Rules Series 2200, which is where post-secondary approvals are addressed, then it should consider making any changes it deems necessary when this rules series is opened as part of Act 173 rulemaking review of rules series 2200.

Discussion followed regarding the process paralleling the independent school approval process, exempted institutions, should the State Board continue with approvals, scenario doesn’t happen often, strengthening the criteria of new post-secondary institutions, allowing the Secretary of Education to grant approval, updating the rules, post-secondary accreditation, exempted institutions may have been grandfathered, existing statute very thin, not being in the business of crafting standards for higher education and outside the State Board’s capacity.

Chair Carroll called for a recess at 10:04 a.m. The meeting resumed at 10:24 a.m.

### **Item H: Review Secretary’s Recommendation re Kurn Hattin Homes for Children**

Olsen made a motion: “At this time I move that the State Board of Education pursuant to 1 V.S.A. § 313 find that premature general public knowledge would clearly place the State Board at a substantial disadvantage and would further move, that the State Board of Education enter executive session to discuss probable civil litigation to which the public body may be a party.” Mathis seconded the motion. Chair Carroll said that the passage of the current motion requires a two-thirds majority vote. Chair Carroll called for a vote. The motion passed unanimously.

The State Board of Education entered executive session at 10:27 a.m. The meeting reconvened at 11:31 a.m.

Chair Carroll said that the State Board concluded an executive session. The State Board discussed the Secretary’s recommendation regarding Kurn Hattin Homes for Children. The State Board discussed that the original matters brought forth by Secretary French are concerning and the State Board wants to have an adequate amount of time to consider the Secretary’s recommendation. The State Board received communication from other parties that have taken issue with the some of the conclusions and interpretations of the Secretary. It became apparent that this will become a complex and contested matter. The State Board would like to consider the topic after it has ample time for a State Board discussion and when it has secured legal counsel to assure all parties are treated fairly. He added that the State Board takes the Secretary’s recommendation for review very seriously.

Olsen moved that State Board table the agenda item until a time when the State Board has secured legal counsel and has scheduled a meeting to take up the matter with sufficient time to address the various issues. Lavoie seconded the motion. There was no discussion. The motion passed. Mathis was absent for the vote.

Kim Dougherty, Angus Wagstaff, PC, asked the Chair for a chance to address the State Board. Chair Carroll agreed. She said she appreciated Secretary French's recommendation to the State Board and the State Board taking the matter very seriously. Olsen asked that since the State Board tabled the motion and would address the matter at a later date, if counsel would be willing to defer her comment to that time. He added that the matter was not extinguished. Dougherty urged the State Board to use their authority under 1 V.S.A. section 310 and call a special meeting on these matters as soon as possible. Delaying the vote was a delay of justice for the survivors and it only continues to leave the children at Kurn Hattin at risk. It was a very serious matter. It needs to be heard immediately. She said it was a shame that the State Board deferred the vote.

### **Item I: SBE Rules Needing Updates – Next Steps**

Emily Simmons, AOE General Counsel, shared a memorandum that included a chart of the State Board of Education rules and the last date each was revised. She included notes on how each should be prioritized and if they are out of date or out of compliance with the current statute. Simmons said there was not a single rule that does not require an update. Many rules will be updated because of legislative action such as Act 173. Simmons said that Donna Russo-Savage, AOE staff attorney, was available to help with research and drafting assistance of the rules when the State Board was ready to take on the task. Gleason asked for a listing of the State Board rules that may fall to the AOE as the State Board redefines itself. Chair Carroll said that Rules Series 4000 and on will be returned to the AOE.

Chair Carroll said the State Board would be wise to get started on updating the rules. He suggested Rules Series 1200 and 2200. Lavoie has begun to gather State Board members availability to form working committees to take up the required work. Chair Carroll was looking for three (3) members per working committee. He asked that each committee identify the area or rule that it would like to begin working on. Chair Carroll added that the updated language should address concerns of equity and inclusivity. Simmons recommended a process to work sequentially and not work on more than two (2) rules series at one time. Simmons suggested creating one rulemaking committee with their first task being to make a list of priorities to recommend to the full board. It would include a starting place, which rules are most urgent and an order to take them up. The State Board agreed with the suggested approach to addressing the rules.

Chair Carroll called for lunch at 11:57 a.m. The meeting reconvened at 1:02 p.m.

### **Item J: SBE Workplan/Agenda Setting**

Chair Carroll asked Gleason about her research for implicit bias training. Gleason said she checked into the State of Vermont's implicit bias training. She said it was targeted for the workforce and would likely not benefit the State Board. Gleason provided two proposals. The

first was for an implicit bias training provided by Creative Discourse. The second was an implicit bias training provided by the Vermont Human Rights Commission (HRC). Gleason said she felt both would do an excellent job and she spoke of the differences between the two proposals including cost, duration and training style. Discussion followed regarding the cost difference, classic implicit bias training, training as a group, training as tools to start the process and that learning is continuous. Chair Carroll suggested retaining the HRC and making a contribution of one thousand dollars to them. Discussion followed on negotiating the cost. Chair Carroll asked Gleason to follow up with the HRC. Olsen said that the State Board should review the state's bidding requirements to find out if this process needs to go out to bid. The one-thousand-dollar donation may trigger the need to bid. Chair Carroll asked Gleason to pursue the question. Secretary French said he would investigate it. Chair Carroll suggested having the training in any of the next 4 months.

### **Item K: Continuation of Theme Collection of Rules Series 1300 and 2360 and Schedule for Public Comment**

Emily Simmons, AOE General Counsel, shared a memorandum titled, "Public Comment on Proposed Revisions to Rule Series 2360 and 1300." She said it contains eleven (11) instances of public comment and she identified and explained the themes. The themes were 1) eliminate "Adverse Effect" rule; 2) add additional parental consent provisions; 3) support for the rules as drafted; 4) support for the Disability Law Project (DLP) proposal; and, 5) disagreement with using a block grant model for special education funding. Simmons suggested that the State Board further understand "Adverse Effect" by hearing from the State's Director on Special Education and her staff. She identified an area that the State Board does not have legal authority.

Discussion followed regarding users having a different view than the advocates, New Hampshire's parental consent provision, AOE and Act 173 Advisory Group reconciled most issues, reviewing testimonials, State Board needing its own counsel on adverse effect, Federal Education Group (FEG) to provide data on other state's practices on adverse effect and the Education Commission of the States providing details. Mathis volunteered to reach out to the national groups to obtain data on other states practices on adverse effect. Chair Carroll said the final public hearing on Rules Series 1300 and 2360 would be scheduled for the November meeting. He asked Sprague to supply meeting links to the previous public hearings on Rules Series 1300 and 2360 to all State Board members.

Chair Carroll recognized Simmons in appreciation of her hard work in preparing for the meeting.

Chair Carroll asked for State Board members to stay on until the last person provides public comment.

### **Item L: Public Hearing on Rules Series 1300 and 2360**

Richard Smith, Associate Director of Special Services at North Country Supervisory Union, addressed the State Board. He is also a member of the Vermont Council of Special Education Administrators (VCSEA) Rules and Regulations Committee. He reminded the State Board of

written testimony submitted on May 20<sup>th</sup> on Rules 1300 and 2360. Additionally, the VCSEA has submitted supplemental written testimony. Smith said VCSEA supports the current draft Rules of 1300 and 2360 as proposed by the State Board of Education. The rules were developed over a year's work with the AOE, the Census-Based Funding Advisory Group and various stakeholders around the state and incorporates the FEG recommendations. He requested that the state amend the definition of special education to align with the federal definition and align allowable uses of the Individuals with Disabilities Education Act (IDEA) Part B funds in order to fully align with the definitions to take full advantage of the IDEA Part B range of spending options. Smith added the FEG advised permitting districts to spend state funds on the full range of activities contemplated by Act 173 so that districts can code their maintenance of effort (MOE) eligible spending differently to allow more flexibility in using the funds. The FEG advised to explore strategies to reduce administrative burdens associated with monitoring and oversight. The VCSEA does not feel that any additional changes to child find or adverse effect are required to implement Act 173. Act 173 was designed to strengthen the system of supports for all students. It was not intended to replace or expand entitlements created by federal law. The VCSEA has reviewed proposals drafted by the DLP, the public comment by the Vermont Family Network (VFN) and the Special Education Advisory Panel and does not agree with adding an Multi-tiered System of Supports (MTSS) within the special education rules as MTSS is a framework for general education and not special education. The VCSEA disagrees that eliminating Vermont's definition of adverse effect is necessary to achieve implementation of Act 173. Vermont's current rules are already in alignment with special education regulation which includes the construct of adverse effect but would support a recommendation to the AOE to address specific issues of non-compliance. Smith said the requirements that are already in place are extensive and enough. He requested to not generate new forms, timelines and requirements because in the end they will interfere with what is important such as devoting time for improving instructional practices.

Olsen made a motion to adjourn. Mathis seconded. The meeting adjourned at 2:25 p.m.

All State Board members remained for the public hearing.

Stacy Rice, Director of Special Services at Kingdom East Supervisory Union (KESU) addressed the State Board. She said her supervisory union operates Prek-8 and grades 9-12 have school choice. She asked the State Board to recognize and listen to the advice from the University of Vermont's (UVM) Weighting Study. Rice said that (KESU) is implementing the Vermont MTSS Framework and they believe in the principles. She shared some examples of what could happen if the UVM Weighting Study is not considered in Act 173. She compared poverty rates of school in the (KESU) with schools in other districts with comparable student populations, grade levels and poverty rates.

Newark Elementary School with 67% poverty rate compared to Bingham Memorial School with 19% poverty rate.

Lyndon Town School with 54% poverty rate compared to Charlotte Central School with 8% poverty rate.

Lunenburg and Gilman Schools with 56% poverty rate compared to Folsom Education and Community Center with 10% poverty rate.

She said that having the money shared equally would not represent the students in poverty. She urged the State Board to consider the UVM Weighting Study and to recognize her work as a professional and as a taxpayer in Vermont.

Chair Carroll, Mathis and Gleason remained until the end of the public hearing.

The public hearing ended at 3:00 p.m.

Minutes prepared by Suzanne Sprague