

## State Board of Education

### Approved Meeting Minutes

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

**Call in #: 1-802-552-8456, Conference ID: 285 095 517#**

**Date: November 18, 2020**

#### **Present:**

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

**Agency of Education (AOE):** Emily Simmons, Clare O'Shaughnessy, Jacqui Kelleher, Tracy Watterson, Chris Kane, Chris Case, Judy Cutler, Maureen Gaidys.

**Others:** Susan Aranoff, Meagan Roy, Deanna Jones, Mill Moore

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

Chair Carroll called the meeting to order at 8:34 a.m. Chair Carroll took roll call and asked members to introduce themselves.

#### **Item B: Consent Agenda**

##### Consent Agenda:

Chair Carroll asked for a motion to approve the consent agenda. Olsen asked to remove the October 21 minutes from the consent agenda so that an adjustment could be provided. Gleason moved to approve the minutes from the October 21 meeting; Olsen seconded. Olsen proposed a correction on page 3, last paragraph, third sentence, "concluded by consensus..." He raised a point of clarification and said that there was no consensus reached in executive session. He proposed striking "conclude by consensus" and replacing it with "discussed." Gleason seconded the friendly amendment to accept the minutes as amended. Chair Carroll called a hand vote; the vote passed unanimously. Chair Carroll asked for a motion to approve the minutes from the November 6 special meeting. Samuelson moved; O'Farrell seconded. Chair Carroll called a hand vote; the vote passed unanimously.

Chair Carroll went over Board norms for meetings and reminded the Board that the meeting is recorded and videotaped. He asked if there were any amendments to the agenda; there were none.

#### **Item C: Board Announcements**

Gleason recognized the tremendous efforts in education to keep everyone safe, most recently the surveillance testing in schools, the work schools are doing with contact tracing and added

that schools are taxed with doing their best to deliver and these incremental changes are being absorbed in some cases with almost skeletal staff. She expressed tremendous gratitude and said it comes at a cost and at a time when education is making heroic efforts to provide and protect students.

### **Item D: Student Report**

Chair Carroll said he was pleased and proud of the student members and their initiative. He told members to save their questions for the end of the presentation.

Brochu shared a presentation titled, "[Student Report and Survey Results](#)." She explained that with help from Gleason, she developed a system of surveying students across the state with the purpose of giving a voice to students. She thanked all the principals for allowing this survey to be shared with their students.

She and Peña shared observations and spoke about demographics, days of in-school instruction, how protected students feel at school and in extracurricular activities, spring learning compared to fall learning, workload and access to teachers. There was discussion on teachers working hard to make virtual learning positive, adjustments and challenges to independent/individual learning, workloads on online learning days, and access to teachers from home.

There were questions and discussion on the future of hybrid learning, different responses from schools on feeling protected, how schools were chosen for the survey, efforts made to get breadth and depth of representation, surveying the public with good issues raised in this survey, mental health and social connectedness and geographic isolation.

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

Chair Carroll stated that public comments should be related to items of discussion named on the agenda. He said if there were public comments for issues not on the agenda, that is not particularly helpful at this time because in some ways, the Board has quasi-judicial responsibilities and outside opinions related to its quasi-judicial role cannot be entertained. He asked for public comment.

Chris Kramer, Cornwall, said perhaps he should delay his public comment per the Chair's instruction. Chair Carroll said he didn't know what topic they were speaking to and asked him to proceed. Kramer spoke about exploring the possibility of withdrawal and that they were a unified high school district before they were a unified union district and they would like to keep that structure; the issue is school closure. The district board set a timeline that would close 4 of 7 elementary schools with a vote prior to Town Meeting Day. He spoke about the possibility of petitioning the board to amend the articles and that that they were in the first cohort of voluntary mergers and didn't have insight into the default articles thus their language is not as strong around closure. There is no electoral vote on closure, only a super majority. He asked Board members if there was anything in their draft petition that would make them more comfortable with the path that was being pursued and if they could encourage his local school board to allow petitions to be warned in voluntary districts that went early.

Chair Carroll noted that Board members do not act independently. Olsen cautioned the Board against acting or expressing a view on this issue as that would be inappropriate. Chair Carroll said it is not the Board's role to influence local decisions.

Millard ("Mac") and Laurie Cox, Ripton, introduced themselves and spoke about petitions related to charter changes that were submitted with the proper amount of signatures but that the local board chose not to take those petitions up and present them to the voters (towns voting for school closure for their town and having even representation of communities). Both provisions were denied being brought to the vote and as a result, Ripton feels they have no representation on the board and their school will be closed and withdrawing from the district is their only choice as they fear they will have no voice in their students' education if they go to Middlebury.

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

Chair Carroll spoke about the roles and responsibilities of the Board and the AOE regarding the proper process for complaints involving independent schools and that there is now a shared understanding of the way forward and separate roles, which are very different. The Board's special role is that its quasi-judicial authority is limited to considering the suspension or revocation of an independent school's approval, if recommended by the AOE Secretary. The role of initiating any investigation of an independent school rests with the AOE. If the public has concerns/complaints about an independent school, these should be brought directly to the AOE Secretary.

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

Chair Carroll invited Secretary French to address the Board. Secretary French apologized for being late and missing Friday's meeting due to dealing with COVID-19 responsibilities. He concurred that there is a clear understanding of how the AOE and the Board work together on independent school complaints, investigations, etc. Regarding COVID-19, he said he was struck by the stories shared by the students. He spoke about the transition from Step II to Step III and that work started internally on how to turn beyond logistics to how this has impacted learners and then case counts started to grow and there was no capacity to make that shift, as the priority has been managing the statewide increase in outbreaks. Despite dynamic shifts, schools remain constant. The School Surveillance Testing was rolled out this week with help from the Vermont Department of Health (VDH). This will use data from schools as a proxy for making predictions statewide. Gleason again recognized that schools are taxed with becoming testing sites and contact tracing responsibilities and that this is helpful in understanding COVID-19, but it comes at a cost. There was further discussion on substitute teachers and increased need, demographic challenges in the labor force, stress of hybrid learning, fatigue, pressure, public health issues of quarantining, that all substitute teachers are not created equal and that coupled with the complexity of managing a virtual classroom/hybrid learning can create the perfect storm.

There was discussion on sustainability, tools that might alleviate work associated with personal learning plans, and the use of time and calendar structure. Olsen acknowledged the hard work of Secretary French and his staff during these unprecedented times and expressed respect and

appreciation for doing their day job on top of the COVID-19 response. Secretary French spoke about almost every agency in the state working toward or at least touching the education response, using a lens of what is most essential, critical need for substitute teachers and delays associated with background checks.

### **Item H: Update on Data Suppression Anomalies – Dan French, Secretary**

Chair Carroll invited Secretary French to speak. Secretary French referenced [an update of data suppression](#). He spoke about the law changing and having a rule (Board) and a state plan (required under Every Student Succeeds Act) and that there is disconnect between the rule and federal law. Olsen asked to talk about the management of the project and contract to see if there were any lessons learned. He spoke about the original Request for Proposal (RFP), the contract and amendments and technical design documentation. He observed that in the contract the vendor was obligated to produce a comprehensive test plan and test cases as clear deliverables. His concern was that when he asked for test records and cases, he received performance test results that really only ensure that the system is responsive; there were no test cases for functional testing. His concern was how much functional testing was done and what criteria was used to test the system to be sure that it was performing as expected. He spoke about vague references in the contract/RFP and expressed concern about the vendor suppressing data in an effort to protect statistical integrity and that this might lead to protecting beyond the legally required threshold. Olsen said he couldn't find any documentation that clearly maps out the suppression logic, how it was tested, and how it was implemented.

Secretary French spoke about the [Statewide Longitudinal Data System \(SLDS\)](#) and the [State Report Card](#) coming online simultaneously and both being complex products. He spoke about using tools that can be controlled more dynamically so that the AOE has full control of data management as opposed to working through vendors and complex platforms. There was discussion on examining the suppression logic and assessing the suppression anomalies, satisfaction with the Report Card platform, working to improve the SLDS and difficulties associated with intellectual property, the [Vermont Education Dashboard](#), contract commenced before Secretary French was appointed, Report Card having its own suppression logic, needing some insight from the Data Management and Analysis Division (DMAD) division, AOE's dissatisfaction with the product, obligations to follow the ESSA plan, technical deficits, [good example of data visualization of AOE PreK](#), goal of making data more useful, AOE's overall strategy to be transparent, useful data tools, and that any ESSA plan corrections will more directly involve the Board.

Chair Carroll called a recess at 10:42 a.m. He called the meeting back to order at 11:02 a.m.

### **Item J: State Board of Education Budget – Fiscal Year 2021**

Chair Carroll spoke about the Board budget being part of the AOE budget and that statute reads that the Board shall review the budget before it is presented to the Governor and that the AOE Secretary shall present its budget to the Board before it is provided to the Governor. He spoke about the Board's budget being its own business about what was needed for operations, staying within this year's budget of \$70k, the removal of \$20k for National Association of State Boards of Education (NASBE) dues with funds re-assigned for legal representation, advertising expenses, no plan to separate the Board's budget from the AOE's budget, who speaks for the

Board to the General Assembly, anticipating bill back from the AOE for services provided, and anticipated legal expenses. Chair Carroll said he would come back to the Board with a budget proposal for the December 16 meeting and suggested that if the Secretary was agreeable to it, he could then hopefully incorporate it into his budget recommendation to the Governor. Secretary French said he would endeavor to do that and added that it is a dynamic situation.

Chair Carroll said that statute says the Board shall review the AOE's budget and added that there are a lot of Board duties that do not always get done. He reviewed the budget process and emphasized that the Board should be looking at the AOE's budget, not the Governor's budget. Secretary French spoke about struggling with the timing of the budget and it being a dynamic process right up until the Governor's Budget Address and that he could provide an "almost final" draft prior to that. He added that he would not have that prepared for the December meeting, but could for the January meeting.

There was discussion on what action the Board would/could take upon review, how this is prioritized with Board vs. AOE duties, rubber stamping is not appealing, knowledge/insight to be gained through the process of review, Board needs independence to give advice, matching themes and understanding resource allocation, and Secretary French sharing his legislative budget presentation simultaneously with the Board. By general consensus, at the Secretary's convenience in January or late February, the Board will have a budget presentation from Secretary French. Chair Carroll said at the December meeting, the Board will provide a recommendation to the Secretary on its budget for fiscal year 2022. Chair Carroll will prepare this information and distribute it in advance to Board members.

### **Item K: Update and Review of Timeline on Rules Series 2220**

Chair Carroll invited Emily Simmons, AOE, General Counsel, and Meagan Roy, Act 173 Advisory Group (AG) Chair, to address the Board. Simmons spoke about drafting the rules and that there have been two presentations to the AG (October and November meetings) and that the rules can be ready ahead of schedule if that is what the Board wants to do. The Rules 2220 Working Group met on November 17, 2020 and are close to having a draft that all agree on. She expects that she will present a consensus draft at the December AG meeting. Roy concurred that the Act 173 AG will review the consensus draft in December and that there was discussion on this last month and they were not quite ready to adopt it, but there were no significant questions or issues raised. The Working Group's efforts were appreciated.

There was discussion on utility in having the Board form a Rules Series 2220 committee, considering other changes that need to be implemented in concert with Act 173, proceeding with caution, not interfering with good work in progress, timeline review and distribution, and this being an opportune time with rich representation and trust in the Board. Chair Carroll thanked Roy and Simmons for their harmonious collaboration and asked them to coordinate on the timeline and report back to the Board so it can be ready to respond and develop a separate committee to work in parallel on issues apart from the work of the Act 173 AG. Chair Carroll suggested appointing a Rules Series 2220 committee and having the Board ratify those appointments at the December meeting. The committee would have a consensus list of what needs to be examined and possible priorities, beyond the changes being brought forward by the AG/AOE. The committee would decide next steps and share their timeline with the Board.

Chair Carroll recessed for lunch at 12:04 p.m. and asked members to return at 12:40 p.m. He called the meeting back to order at 12:40 p.m. He said Olsen had been called away on business and would not be returning for the rest of the afternoon.

### **Item L: State Board of Education Workplan/Agenda Setting**

Chair Carroll summarized agenda items for upcoming meetings. For December: Board budget, reflect and start formulating guidance on Rules Series 1300 and 2360, review timeline and appoint committee and general discussion on Rules Series 2220, draft of annual report to the Legislature and draft of proposed legislative initiatives. For January: AOE's 2022 budget proposal, review and adoption of annual report, review and adoption of legislative agenda, revisit Rules Series 1300 and 2360 and consensus proposal, timeline review and first draft of revisions for Rules Series 2220, interim report from Act 173 Advisory Group, and implicit bias training (first of two sessions).

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

Chair Carroll asked for any public comment. There were none.

### **Item L: State Board of Education Workplan/Agenda Setting (continued)**

Chair Carroll returned to the agenda setting conversation. Mathis asked to receive suggestions for legislative agenda and Rules Series 2220 items in advance and suggested reviving the Board's legislative committee. Chair Carroll asked when the Secretary might complete the investigation and have a recommendation on Kurn Hattin. Secretary French could not give a firm date, possibly by the end of December. Chair Carroll explained the process that would follow the recommendation. Chair Carroll suggested moving to Item N and coming back to public comment if needed. Simmons asked for time to secure AOE staff. Mathis asked what might be on the horizon for the next legislative session. Secretary French suggested literacy and said that the COVID-19 response/impact would likely take precedence over that, education reform and Title programs. Chair Carroll suggested divorce of school districts, procedural provisions that impede this, need to strengthen the coordinated oversight of both education and residential services in schools that provide both, New England Association of Schools and Colleges (NEASC) approval and the school approval process for public schools.

### **Item N: Rules Series 1300 and 2360 – AOE's perspective on outstanding issues raised through public comment**

Chair Carroll invited Simmons to address the Board. Simmons spoke about the summary of public comment that was provided and the request to speak about 1) adverse effect 2) parental consent and 3) multi-tiered systems of support (VTmtss). She offered for the AOE team to address the Board and introduced Jacqui Kelleher, State Director of Special Education; Chris Kane, Special Education Program Manager; Clare O'Shaughnessy, Legal Staff; and Tracy Watterson, VTmtss Program Manager. Kelleher spoke about being new to Vermont and that adverse effect is different in Vermont. She shared [a presentation on Adverse Effect](#) that addressed the origins, [Vermont Special Education Rule 2362\(d\)](#), Adverse Effect Committee, controversy of Adverse Effect, and Adverse Effect and Multi-Tiered Systems of Support.

There was discussion on applying rules consistently, the consequences of the Board terminating the adverse effect rule, need to have documentation that adverse effect was considered, practice of identification, proportionality analysis, neighboring states' adverse effect determinations, centralization of special education, and consistency and variability across districts.

The discussion shifted to parental consent, administrative complaints, dispute resolution, and parent engagement. O'Shaughnessy shared some slides on parental consent and addressed Individual Education Program (IEP) development, ensuring Free Appropriate Public Education (FAPE), entitlement to meaningful participation, history of Act 153 and Act 156, independent evaluations, practice vs. systems, using the New Hampshire model, the importance of partnering with parents and Board making no decisions until the public comment period closes.

Watterson shared a presentation titled, "[The VTmtss Framework](#)" and spoke about the systemic and comprehensive approach, continuous improvement, focus on success of all students, misconceptions of VTmtss, how appropriate staff is secured and trained, broad inclusion of parents, collective expertise and equity. There was discussion on how VTmtss fits into the rulemaking for Rules Series 1300 and 2360, language used suggests that conditions are not consistent, Education Quality Standards (EQS), psychometrics and belief systems, [16 V.S.A. § 2902](#), lack of data on adverse effect gate, Education Commission of the States' (ECS) opinion on Adverse Effect and that [16 V.S.A. § 2902](#) has some specific language that should be examined and considered.

Chair Carroll thanked AOE staff for the rich discussion. He asked the Board if they would be responsive to have a few members serve as a working committee to address these three issues and come back to the Board (December meeting) with recommendations. There was interest from Gleason and Farrell. He surveyed student members for interest in participation; Peña expressed interest. Chair Carroll asked Gleason to lead a committee that includes Farrell, Peña and Mathis.

Chair Carroll asked for a motion to create a Rules Series 1300/2360 committee of the Board with the charge of studying and making a recommendation to the Board on the three issues discussed as part of item N: the Adverse Effect rule, provisions regarding Parental Consent, and additional rules concerning Multi-Tiered Systems of Support. Samuelson moved; Gleason seconded. Chair Carroll called the vote; it passed unanimously. This committee will review public testimony heard on these topics and the dialogue from AOE staff at this meeting and present its initial thoughts on each of these topics to the Board, at its December 16 meeting.

### **Adjourn:**

Chair Carroll thanked State Board members and adjourned the meeting at 3:08 p.m.

Minutes prepared by Maureen Gaidys.