

State Board of Education

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 863 927 299#

Date: January 20, 2021

Present:

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

Agency of Education (AOE): Emily Simmons, Suzanne Sprague, Maureen Gaidys

Others: Mill Moore, Vermont Independent Schools Association (VISA); Meagan Roy, Act 173 Advisory Group Chair; Marilyn Mahusky, Act 173 Advisory Group Vice-Chair; Susan Aranoff; Josh Dougherty; Bridget Asay, Attorney; Amanda Garces, Human Rights Commission.

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

Chair Carroll called the meeting to order at 8:32 a.m. and asked members to introduce themselves. Chair Carroll said there were no amendments to the agenda but that he planned to accelerate items through Item J to allow more time for Item K, and to end promptly at 11:45 a.m. so that members could have the option to view the inauguration scheduled for noon.

Item B: Consent Agenda/Board Announcements/Student Report

Consent Agenda:

Chair Carroll asked for a motion to approve the consent agenda items which included the minutes from the December 16, 2020 meeting. Samuelson moved to discuss the minutes. Gleason moved to adopt the minutes; Olsen seconded. Samuelson offered edits to include the words "special education as it applies to" to two sentences under Item H and under Item K replacing "expense of students" with "number of students in poverty." Chair asked for comment or discussion. Gleason accepted the modified amendment to the motion. Chair Carroll called the vote. The vote passed unanimously.

Item C: Board Announcements, Student Reports

Board Announcements:

None

Student Report:

Brochu gave an update on the student mental health survey. She and Peña met recently with a St. Michael's College professor who provided some resources; they will be meeting with her

again and will present this information to the Board soon. Brochu shared a personal experience with standards-based grading – where she did exceptionally well only to realize the targets for the next assignment would be the same. It is difficult for high achievers to do well and feel accomplished, only to have the grades replaced with the next assignment. Chair Carroll said there was still accomplishment in her excellence. Peña shared that she has been working on the survey and that it has been a quiet stretch at school. Chair Carroll inquired about two issues she raised at prior meetings: use of masks and raising the Black Lives Matter (BLM) flag. She said the mask issue was being addressed and the BLM issue was ongoing, and the vote was to raise the BLM flag, but there was opposition. She intends to investigate this further and see if there might be a compromise, although she doesn't think there needs to be compromise.

O'Farrell mentioned that Brochu was interviewed by WCAX on the importance of sports and did a great job. Samuelson directed comments to Peña and shared that she had attended a recent conference that TJ Donovan, VT State Attorney General, also attended and he spoke about how he uses litigation as a last resort and stressed the importance of education and that people want to do the right things and helping them expand their framework of understanding. She continued that as a Board there was a lot of room for growth and this was an opportunity as a Board and as community members to improve understanding. Gleason shared that Addie Lessner, a member of a student network on anti-racism, has received a grant to provide books to lower grade classrooms to further the cause and connect around issues related to curriculum.

Item D: Public to be Heard

Chair Carroll asked if there were members of the public to be heard and asked that they speak only to agenda items and to avoid any matters of quasi-judicial nature. There were none.

Item E: Chair's Report

Chair Carroll said that he has been in recent contact with legislators and to date there has not been legislation introduced to address the divorce of union school districts; a moratorium might be proposed. Regarding the Weighting Study, there are two bills introduced, H.54 (Sibilia) and S.13 (Baruth). The House bill was very ambitious, and the Senate bill was in contrast with H.54 and offers a study be undertaken. Legislation to reform the Board was vitally important, and Chair Carroll explained that the bill that passed last session by the Senate had died as it was not passed by both houses and needs to be re-introduced. He shared that the Sunset Advisory Commission was very enthusiastic about this bill and this was a shift. He was encouraged that there was support in both chambers to move this legislation forward.

Item F: Secretary's Report

Secretary French spoke about some COVID-19 observations: we seem to have navigated the holiday period well and that required significant planning at the district level; cases are levelling off and we are cautiously optimistic; regionally our neighbors seem to be doing well; college students are returning and this coupled with tourist travel creates some unknowns; have had imperfect information from the federal government around vaccine supply; hoping to return to more in-person instruction with warmer weather and vaccine distribution; reaching

out to national partners and starting to point the system to recovery and address the impact of COVID-19 on education, mental health and social-emotional learning (SEL); Congress has put more money into existing programs, which goes mostly to districts; this year we have ~ \$126 million and Congress is talking of additional support this spring. Lastly, he updated the Board on Kurn Hattin. He has appointed members of a review team, this was somewhat delayed due to the holiday, work was going forward and he will keep the Chair apprised of progress.

There was discussion on the Weighting Study, adequate staffing at the AOE, capacity/vacancies of AOE, resources as an afterthought in legislation, aggregate impact of legislation requiring staff resources, and clarity on AOE's hiring freeze.

Chair Carroll called a recess at 9:18 a.m. He reconvened at 9:25 a.m.

Item G:

Chair Carroll clarified the various changes to rules and what would be addressed at this meeting and in this section. Changes to Rules Series 1300 and 2360 (Act 173 and modifications in practice) will be addressed under Item H. Separately, changes to Rules Series 2200, (not related to the implementation of Act 173), will be addressed under Item J. This Item (G) was a report from the work of the Rules Series 2200 Working Group (independent schools). In order for the Board to initiate rulemaking by June 30, 2021, the May 19, 2021 Board meeting is the last practical date that the Board can adopt these rules.

Briefing on Rules Series 2220 (except rate setting)

- Megan Roy, Chair, Act 173 Advisory Group (AG)

Roy summarized the conversation of the AG. The AG discussed this in December and most issues were resolved via the Working Group – three primary areas of discussion: enrollment of students on Individualized Education Programs (IEPs) and applicability of this to choice towns and reordering and rephrasing of enrollment bullets. There was discussion and largely agreement on identified issues. The AG agreed with the addition of more discussion on rate setting.

- Emily Simmons, General Counsel, AOE

Simmons shared a [presentation that detailed the Act 173 requirement related to Rules Series 2200](#) and highlighted the draft amendments to Rules Series 2200. There was discussion on different types of independent schools, enrollment, confusion caused by Legislature's level of prescriptiveness, need for clarity of language, suggestion that Rules Series 2220 Committee take a break from their current work on non-Act 173 matters and address some of the fine-tuning of language that might be helpful and bring back a recommendation to the Board for its February meeting. Olsen suggested that it would be more efficient to have the Rules 2200 Working Group address this. Chair Carroll concurred that the two committees could coordinate and bring language recommendations back to the Board. There was discussion on resources, Act 173 being an anomaly, Kurn Hattin, and the appropriateness of the Board doing investigative work in independent schools. Chair Carroll thanked Roy and the work of her group.

Briefing on Rules Series 2220 Rate setting

- Emily Simmons, General Counsel, AOE

Simmons shared that the Advisory Group's vote to support this draft did not cover Rule 2232 and on; that was where the Working Group's work is focused. Rate setting refers to an internal process of the AOE, where AOE was charged to review information submitted from therapeutic schools. These schools' funding comes through a rate paid by the supervisory union and approved by the AOE, rather than from general tuition. Those rates are required to be no more than what was "reasonably related" to the level of education services provided. "Reasonably related" is all that is in the current rule and all parties agree that more information is needed.

Simmons reviewed the rate setting process

- Mill Moore, Executive Director, Vermont Independent Schools Association

Moore gave his opinion that 1) AOE has a responsibility to approve tuition and excess cost rates with transparency, consistency and accountability and 2) an overlooked part of the statute to advise and consult with independent school community about the nature and amount of services needed throughout the state and to set rates so that schools can thrive and be fiscally strong and deliver services consistent with evolving best practices. Many independent schools struggle to provide professional development and supports. This is complicated and an important opportunity for independent schools. He added that the climate of the stakeholder group was agreeable, and he was hopeful that these needs can be resolved together.

Chair Carroll asked who made up the Working Group. Simmons and Moore responded that the AOE convened a meeting with representatives from VISA, Vermont Council of Special Education Administrators (VCSEA) and the Council of Independent Schools (CIS) for a total of eight members. Chair Carroll reminded the group that the Board by statute must adopt a rule and present it to the Interagency Committee on Administrative Rules (ICAR) no later than June 30, 2021. This must be presented for action to the Board at the May meeting. He acknowledged that this was a long reach in a short time.

Item H: Rules Series 1300 and 2360 – Report from the committee

Chair Carroll explained that the draft proposal was approved a year ago and that the public comment period was extended with valuable input. Gleason and her committee have been working through this input.

Gleason spoke about great support and collaboration of her committee. They were charged with reviewing the three areas that received the most public input (Adverse Effect, parental consent, and Multi-Tiered Systems of Support (MTSS)). They reviewed comments, crafted questions for clarification, received broad responses with much consensus from various stakeholders. The material was highly technical and regulated. The goal is to improve alignment with federal regulations and consistency of best practices. The committee has continued to meet, and Simmons has drafted language. Final draft language will be ready for the February 17, 2021 Board meeting.

Simmons discussed the areas of agreement: how rules define Adverse Effect, method for identifying two disability categories (specific learning disability and deaf-blind) related to Adverse Effect and how parents might have a more formal method of giving feedback to the IEP process. Simmons said they are close to consensus on these three issues. Gleason added that there was consensus to having a reference to MTSS in Rules Series 2360, but an MTSS rule does not belong in this rule and needs a separate process. Chair Carroll asked people interested in having MTSS incorporated into these rules to come back to the Board very soon with new rule, proposed language, where it fits and who would be involved so that the Board can begin a new rulemaking process that incorporates MTSS. Chair Carroll acknowledged the people who worked hard with the Rules Series 1300 and 2360 committee.

There was discussion on Mahusky's side-by-side document, the challenge of tight timelines and busy schedules, gratefulness for the professional expertise offered and active involvement of stakeholders with this committee, implementing with fidelity and transparency, best practices, partial consent, parent engagement kit or other tools, speculative concerns, New Hampshire's model for parental input, Maine's adverse effect eligibility process, and collecting feedback from other states. Chair Carroll thanked everyone for their hard work.

Chair Carroll explained that he will testify to the Legislative Committee on Administrative Rules (LCAR) on February 4, 2021 to request an extension and it was likely this request will be granted. He encouraged the Rules 1300 and 2360 committee to come back with a consensus document at the February 17, 2021 Board meeting, then return in March with a document that the Board can act upon. He said the Board will need to see the entirety of the rules by the March meeting. If it has to wait until April, that is still workable.

Item J: Rules Series 2220 – Update from the Committee

Chair Carroll asked Olsen for an update. Olsen said the committee has had some productive discussions and have reached out to some key stakeholder groups (VISA, Vermont School Boards Association (VSBA) and Vermont Superintendents Association (VSA)). The scope of work was narrowly focused on all things not directly impacted by Act 173. Phase 1 was quick wins to be inserted into the rulemaking process dictated by the schedule laid out in Act 173. Phase 2 was issues that will take more time and will likely be a rulemaking process independent of Act 173. Phase 1 was cleaning up the rules around the complaint process as it relates to independent schools and the need for a more graduated process. There has also been discussion on providing greater transparency. Phase 2 will be looking at the approval standards for independent schools. The group also had some discussion and need a full Board discussion on making a legislative recommendation to shift investigative and prosecutorial duties to the AOE so that the Board can remain quasi-judicial without having any conflict. Olsen added that the sequencing of rules is also in need of being re-ordered.

Item K: Tuition Appeals per 16 V.S.A. §828 – *(potential executive session)*

Chair Carroll spoke about four appeals, filed by separate families, in which the parents have applied for tuition support to send these children to a religiously affiliated school. This request

was denied by the local education agency (LEA). The parents have appealed this denial to the Board per 16 V.S.A. §828. The purpose of the executive session was to talk about procedures and process with Attorney Asay, not any merits of the cases.

Olsen explained that there would be two motions. The first will address the first requirement, a finding that executive session is appropriate, and the second motion will address the procedure to enter executive session.

Olsen 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 with respect to pending quasi-judicial proceedings and pending litigation to which the Board is a party would clearly place the Board at a substantial disadvantage. Samuelson seconded the motion. There was a roll call vote. Mathis, O'Farrell, Gleason, Brochu, Samuelson, Lavoie, Olsen, and Carroll voted in favor. The motion passed.

Olsen moved that the Board enter executive session for confidential attorney client communications made for the purpose of providing professional legal services to the body with respect to pending quasi-judicial proceedings and pending litigation to which the Board is a party pursuant to 1 V.S.A. §313(a)(1)(E) and (a)(1)(F). Mathis seconded the motion. There was no discussion. Secretary French said he would not be participating in executive session due to differences in roles on this topic. There was a roll call vote. Mathis, O'Farrell, Gleason, Brochu, Samuelson, Lavoie, Olsen, Carroll vote in the affirmative to enter executive session. Chair Carroll directed the Board to an email sent the night prior for information needed to participate in executive session.

At 11:04 a.m. the Board entered executive session. At 11:43 a.m. the Board returned from executive session and at 11:45 a.m. the Board recessed for lunch. Chair Carroll called the meeting back to order at 12:45 p.m.

Olsen moved that the Board designate its counsel, Bridget Asay, as a hearing officer to conduct pre-hearing conferences, set a briefing schedule, and handle other pre-hearing matters for the Dunn, Gallo, Valente and Buckley appeals, brought pursuant to 16 V.S.A. §828. Gleason seconded the motion. There was a roll call vote. O'Farrell, Gleason, Brochu, Samuelson, Lavoie, Olsen, and Carroll voted in favor. Mathis abstained. The vote passed.

Item L: Legislative Agenda

Chair Carroll started with a review of legislative issues of interest: reform of the Board, unmerging merged districts, the Weighting Study, data suppression, and state construction aid. Chair Carroll asked the Board's views on [Olsen's proposal for Union School District Disaggregation](#) vs. a moratorium. There was discussion on a moratorium on unmerging school districts, that the Legislature needs time to address this thoughtfully, taking on some preliminary work, moving forward with conditions, having a more democratic process, moratorium ensures stability, districts not having a clear path to desegregation, going over Olsen's proposal in greater detail, time is of the essence, and votes are not co-mingled.

Chair Carroll summarized that if asked, he would share Olsen's draft and state that it would be most desirable to address it this session and if that was not possible, a moratorium would be the

next best solution. Carroll spoke about Weighting Study legislation from Baruth and Sibia and a recommendation from Mathis for a study by outside experts. Chair Carroll asked for input on informing the General Assembly. There was discussion on looking more closely at the Weighting Study on a statistical and technical level, a tax commission with support from the Governor to revamp the tax structure, children in poverty in independent schools, value to the study and thoughtful considerations of implementation, Free and Reduced Lunch (FRL) as a crude proxy for poverty, using census data for poverty, not taking a position on action to take on the Weighting Study, and capacity.

Olsen queried the Board in reference to reforming the Board by formally recommending transitioning the investigative piece related to financial capacity to the AOE. Chair Carroll said he would include that in the discussion.

Chair Carroll explained that following the break, Garces would lead a discussion on Implicit Bias that will not be videotaped by *The Media Factory (RETN)*.

Item M: SBE Agenda and Workplan

Chair Carroll reviewed items for the February agenda: a recommendation from Gleason's committee (Rules Series 1300 and 2360), an update from Olsen's committee (Rules 2200), Garces' presentation (part two) of Implicit Bias training, and a presentation from the Ethnic and Social Equity Standards Advisory Working Group (Act 1).

Chair Carroll recessed for a break at 1:24 p.m. to resume at 1:30 p.m.

Item N: Implicit Bias Training

Chair Carroll called the meeting back to order at 1:30 p.m. and introduced Amanda Garces, Human Rights Commission, to lead the training on Implicit Bias.

Chair Carroll thanked Garces for the presentation and said he looked forward to seeing her next month to finish this training and to hear about the progress of the Ethnic and Social Equity Standards Advisory Working Group. Garces offered for Board members to reach out to her with any questions or need to debrief from the training. Chair Carroll thanked Gleason for her organization and follow-through for this training. There was discussion on how best to carry this work forward. Garces suggested an anonymous survey to Board.

The meeting adjourned at 3:43 p.m.

Minutes prepared by Maureen Gaidys