

STATEMENT PROVIDED TO: State Board of Education

FROM: Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)

TOPIC: Recommendations regarding Act 173 Rulemaking

DATE: January 21, 2020

The SBE has asked the Census-Based Funding Advisory Group for a formal statement to summarize its recommendations at this point in the Rulemaking process. Specifically, this statement will provide input to the Board in follow up to its recommended Draft rules, originally presented to the State Board at its December 2019 meeting. It is inclusive of the Agency's verbal response to the Advisory Group's draft, which was shared at our January 5 Advisory Group meeting, and is drawn directly from the Advisory Group's January 15th Report to the General Assembly.

Formal Recommendations to the State Board

The Agency's November 2019 revised draft Rules included revisions to the definition of special education that largely satisfied the Advisory Group's concerns on this issue (see previous SBE testimony and statements for additional detail on these concerns). However, the revised draft did not fully address some of the Group's concerns regarding independent special education schools and stakeholder input for the development of guidance. As requested by the SBE, the Advisory Group presented a revised draft of rules at the December 18, 2019 meeting (attached). At this meeting, the SBE took action on a motion supporting the recommendations of the Advisory Group and advising the AOE to take the recommendations into consideration.

At the January 2020 Advisory Group meeting, the Group had the opportunity to hear from the Agency in response to the draft. Their response was provided verbally, as they have not finalized their revised draft for the State Board. The following summarizes the reaction to the three major recommendations of the Advisory Group:

1. Definition of Special Education: The Agency concurred with the Advisory Group's recommendation to make technical corrections to the Federal citation in the definition of special education.
2. Stakeholder Input in the Development of Guidance: The Agency indicated that they agree in concept with the idea of gathering stakeholder input during their development of guidance. They will be proposing some revised, clarified language specifically outlining how the Agency will solicit input and how it will publicize the input received..
3. Allowability of Costs for Independent Special Education Schools: The Agency indicated that they oppose the Advisory Group's draft language regarding independent special education schools, as they believe it exceeds the Federal requirements and is already addressed elsewhere in their rules. The Agency asserts that costs associated with independent special education schools would be reflected in student IEPs and therefore remain as allowable costs. The initial reaction of the Advisory Group is that it remains concerned about the removal of their proposed language. They continue to believe that without this specific language, LEA's may be limited in what they can consider allowable, which would impact not only the calculation of Maintenance of Effort but also what costs would be eligible for extraordinary cost reimbursement (which would impact special education funding).

The Advisory Group intends to review the Agency's revised draft and provide additional input to the SBE. The Group would like to acknowledge that it is difficult to make a summary recommendation to the SBE without seeing their final proposed Rules.

Areas of rule making identified for additional discussion

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Because it has been operating off of the Agency's proposed process of focusing heavily on the creation of a special education funding chapter (the 1300 series), the Advisory Group has not had an opportunity to fully discuss several additional Rule-related issues. The Group identifies the following as potential issues for consideration:

Special education funding for independent schools

Early on in the rulemaking process, the Advisory Group acknowledged that significant work would need to be done to inform the development of Rules regarding the funding of special education for students attending independent schools. The Act prompts the Advisory Group to inform the General Assembly on any statutory changes it recommends in order to implement the law, "...including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act." The AOE has informed the Advisory Group that they intend to convene a stakeholder group to inform their drafting of independent school rules, and will engage with the Group with the results of that process. It is possible that the Advisory Group may come to the GA later this session with a recommendation as it continues through examination of draft independent school rules.

MTSS implementation

Act 173 includes explicit requirements for both the Agency and school districts regarding the implementation of a multi-tiered system of supports. The Advisory Group recognizes MTSS implementation as critical to ensuring that schools can meet the needs of all struggling learners, not just those with identified disabilities. Act 173 speaks specifically to the development of policies, procedures and guidance governing MTSS implementation and specifies what elements need to be included in those documents.

At the January meeting, the Disability Law Project representative requested that the Agency consider the addition of an MTSS Rule and provided draft language. The Advisory Group had a preliminary discussion of this proposal and agreed to discuss further in February. It has not adopted this language as part of its input to the SBE. The Agency has also indicated that they would share its perspective on this issue at subsequent meetings.

Additional 2360 series proposals

Early on in the Rulemaking process, the Agency of Education recommended making technical corrections to the 2360 series of Rules, designed to bring the Rules into alignment with the funding changes outlined in Act 173. A draft of these changes was summarized and presented to the Advisory Group in April of 2019 (the draft is attached). At the time the Advisory Group had no concerns with the specific changes recommended in their draft.

Individual group members have raised questions regarding the Agency's approach of making only technical changes to the 2360 series. Among the issues identified by individual members are ChildFind responsibilities and Vermont's requirements to demonstrate Adverse Effect during the special education eligibility process. The Advisory Group has not made formal recommendations regarding these changes, and will have further discussion at a future meeting.