

State Board of Education Rule Series 2200 Subcommittee

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 956 405 318#

1 National Life Drive, Davis N513

Montpelier, VT 05620-2501

Date: August 2, 2021

Present:

State Board of Education (SBE) Subcommittee Members: Jennifer Samuelson, Chair; Kim Gleason; and Tom Lovett (joined at 9:45 a.m.).

Agency of Education (AOE): Emily Simmons, Donna Russo-Savage, Maureen Gaidys.

Others: Mill Moore; Sue Ceglowski; William Mathis; and Susan Aranoff

Item A: Call to Order/Amendments to the Agenda

Chair Samuelson called the meeting to order at 9:03 a.m. There were no amendments to the agenda.

Item B: Approval of July 7, 2021, Minutes

Gleason moved to approve the draft minutes. A vote was called. The minutes were approved.

Item C: Public to be Heard

Chair Samuelson called on William Mathis to address the subcommittee. He stated that he had shared his [concerns about Rule Series 2200 in writing](#) with subcommittee members and asked them to consider his suggestions: a review team of two is not enough; wording on “special education students” is ambiguous, having independent schools be judge and jury of their colleagues is looking for trouble, section on lax financial capacity needs a lot of work in order to be effective; tuition section should wait until Supreme Court makes their decision in the Maine case; and the assurance section is too weak and too open for interpretation.

Item D: Update on Act 173 and Related Revision of SBE Rule Series 2200 (“Phase 1 Work”)

Proposed alternate language modifying proposed SBE Rule 2223.8(b) requirement that a school report to the Secretary of Education within five days whenever any changes occur in enrollment, programs, policies, facilities, financial capacity, staffing or administration during the approval period.

Moore said he sent a memo to subcommittee members last week asking for their input. The five-day rule produces a lot of unnecessary work, especially for therapeutic independent schools. There is a consensus within the independent school community that they would like a change in the reporting deadline (30 days

versus 5 days). This is in SBE policy, not in SBE rules. There was discussion on 16.V.S.A. §166, that financial capacity is addressed in Act 173, deleting the 5-day stipulation from policy does not delete it from statute, and SBE policy versus SBE practice that all renewals and approvals have had a condition in the motion that stipulated the 5 days. Moore would like the SBE to remove/modify the standard paragraph of approval to extend the deadline to 30 days and remove the financial capacity piece because it was now addressed in 16.V.S.A. §166 and related rules. There was further discussion on the SBE having a policy to include this in recommendations for approval, notifying the SBE, AOE's position on "5 days" or longer, staff turnover at independent schools, benefit of 5 days versus 30 days for changes other than financial capacity, impact of enrollment fluctuations, bringing a proposed addition to public comment.

It was decided that Moore, Simmons, and a few others would work to harmonize differences outside this meeting.

Proposed language for independent schools to provide assurances that they are checking with the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry, as required by 16 V.S.A. §255.

Simmons shared [a document titled, "Proposed language that AOE intends to present as public comment to Rule 2200"](#) and said this was the subcommittee's opportunity to give input prior to opening public comment. Topics that came out of the 2019 State Auditor's report included: needing more clear language connecting the Minimum Course of Study (MCOS) offered by independent schools and that AOE would check compliance for accredited schools. The approval rule makes a vague reference to MCOS, and Simmons' approach was to address 16.V.S.A. §906 within the approval sentence. This should apply to every school because of Rule 2227; the reciprocity rule is elsewhere. On the second page, the suggestion is to add another requirement, per the State Auditor's findings in rule to add a legal requirement to perform Criminal Background Checks and check employees against the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry. Another topic that was not part of the State Auditor's Report, but surfaced at a recent SBE meeting, is new language that makes it practically possible for a new post-secondary school to gain accreditation in Vermont. The offer is 10 years of accreditation. There was discussion on post-secondary stakeholder involvement, AOE supporting the 10-year timeline, 2227.12 and 16.V.S.A. §255, contracted employees with unsupervised contact, headmasters are very familiar with the requirement of 16.V.S.A. §255, language in 2227.11 that defines financial capacity, and other means of financial capacity besides cash in hand (pledges, lines of credit).

Proposed language for independent schools to provide assurances that they are accredited by a third-party accreditation agency and certify that their curriculum meets the requirements of 16 V.S.A. §906.

Chair Samuelson said this might be more appropriate for Phase 2 to dovetail with changes made to the accreditation process. Simmons said she took this as a prompt to address the two schools with boarding programs (Brookhaven Learning Center and Kurn Hattin) that are not accredited. These schools must be licensed or accredited. Brookhaven Learning Center is licensed by Department of Children and Families (DCF). Kurn Hattin applied for New England Association of Schools and Colleges (NEASC) accreditation and have completed the self-study and site visit. The commission asked for a special progress report and another visit that has been completed. The commission has not yet acted on the application and are awaiting settlement of some issues and accreditation is "tabled."

There was discussion on changes tied to Act 173, all effective dates are July 1, 2023, practical implications of schools meeting requirements earlier so compliance can be assured and public funding can be accessed, AOE is planning a long transition period, relying on text of rules before Administrative Procedures Act (APA) process is finished, and amended rule would apply to effective dates. It was suggested that the changes made in Phase 1 that are not related to Act 173 should be pulled out in case an earlier date made

sense. This would help identify quick wins that might be non-controversial and work that might take longer. Simmons said she will bring that list to the next subcommittee meeting.

There was discussion on third party accrediting agencies being a quick win if that meant sending an accreditation letter to the AOE, and that this is something already in effect and might get at some of the issues that the State Auditor identified. The largest concept for Phase 2 is that the approval process would rely almost entirely on 3rd party accreditation and not AOE approval. We are not yet at the point to require all independent schools to be accredited by a 3rd party agency, so this seems premature. This concept originated from the subcommittee not the AOE. Discussion continued on NEASC recommendations and transparency of those reviews, responding to State Auditor's finding (16.V.S.A. §906), opportunity for a hearing, AOE's approval of MCOS, accrediting the accrediting agency being part of Phase 1 or Phase 2, and Education Quality Standards (EQS). Chair Samuelson referenced the State Auditor's report (page 26) and said Simmons' suggested amendment to rule 2227 addressed this concern. Lovett added that there is no rush to address third bullet point in Phase 1, it can wait until Phase 2. Chair Samuelson said that language will be addressed in subcommittee meetings.

Proposed language to update process for approval of post-secondary institutions under SBE Rule 2240 et seq.
See above.

Accreditation status of independent schools that board K-6 students
See above.

Item E: Revisions to SBE Rule Series 7320 – Emily Simmons and Donna Russo-Savage

Simmons introduced Russo-Savage and said that Russo-Savage will be working with this subcommittee and the SBE on future rulemaking assignments. She addressed the subcommittee because of their desire to make a highly technical change to Rule Series 7000 to add an accreditor, the Association of Independent Schools in New England (AISNE). The list of recommended accreditors appears in rule, and it is not within the SBE's authority to change this by vote, so these rules will be opened for this narrow purpose.

Russo-Savage said she understood that the subcommittee wanted to be able to sunset this rule and have a less formal process for having a list of accrediting agencies. She suggested that the rule would be tied to a sunset date. Russo-Savage explained the benefit of including a sunset provision: she said the benefit is that it holds the subcommittee accountable because if no action is taken, the current list of accreditors goes away. It also would save some time spent on Interagency Committee on Administrative Rules (ICAR) paperwork and public comment process.

There was discussion on this being controversial, having an ongoing and evolving list that meets decided-upon standards, saving administrative effort makes sense, choosing the appropriate sunset date, avoiding conflict by having two lists be the same until sunset,

Chair Samuelson said her goal was to have the subcommittee discuss the idea of what accrediting agencies would be added and which would be removed to Rule Series 7320 so that at the August SBE meeting the full SBE could commence rulemaking for Rules Series 7000. There was discussion on this needing more time, becoming controversial if accrediting agencies are to be eliminated and not heard from, and standards to consider of accrediting agencies. Moore said his association agrees the current rule is archaic and needs to be revised and that they support SBE's preference that independent schools be accredited. He added that accreditation takes many months (typically 18 months for NEASC) and postponement means the starting date is delayed. Moore encouraged the SBE to immediately accept AISNE and then pursue rulemaking. Chair Samuelson clarified that the only way to add AISNE to the list is to open Rule Series 7000, add them to 7320

and almost as soon as that process is complete, they would be rescinding Rule Series 7000 and updating Rule Series 2200 to include the accreditation standards for accrediting agencies. The only way to get AISNE on the list is to open the rule series. There was discussion on letting schools use AISNE to start the accreditation process to speed things up and risks associated with this as it cannot be promised that AISNE will be on the list.

Chair Samuelson asked Simmons if she had time to track down the status of organizations currently listed in Rule Series 7320. Simmons said she hoped to have that for the full August SBE meeting so that rulemaking can commence, and Chair Samuelson will have authority to approve and complete the APA paperwork for rulemaking. If rulemaking for Rules Series 7000 commenced at the August SBE meeting, it would wrap up in April. Phase 2 will happen after the changes to Rule Series 7000 by at least a few months. Chair Samuelson spoke about prolonging Phase 2 and explained that if Phase 1 goes into effect next March there may be wrinkles that were not foreseen and it would be better to make those changes in the work already planned for Phase 2.

Simmons said the idea of sunseting seems to add complication and she would rather have the certainty of controlling the date and keep the rulemaking narrow by design. Russo-Savage asked the subcommittee if they were expecting a draft document for the SBE by August. Samuelson said ideally, a proposed document would be prepared for the SBE prior to the August meeting. Russo-Savage said she would have the APA paperwork or a short memo for the August SBE meeting. Chair Samuelson suggested communicating with AOE prior to the August SBE meeting on language for motions. Chair Samuelson clarified that the concept was to add AISNE and keep other organizations in operation on the list, with no need at this time to take them off. Russo-Savage will work with Simmons on a presentation for the August SBE meeting with a plan to open Rule Series 7000 to add AISNE and remove any defunct organizations.

There will be one public comment period before the next subcommittee meeting. Simmons will collect information and track suggestions to be discussed by the subcommittee. Chair Samuelson asked for other agenda ideas for next meeting. Chair Samuelson gave the dates for the public hearings: August 26, 2021, at 12:00 p.m.; September 15, 2021, at 4:00 p.m.; September 20, 2021, at 4:30 p.m.; and September 26 at 7:00 p.m. There was discussion on the duration of public hearings, extending time if needed, hybrid option for the public, and getting the public hearings scheduled. Invitations to the public hearings should be sent to the full SBE. The hearing are public meetings and should be warned accordingly. There was discussion on Simmons collecting themes from public comment, this being an organic process, and revisiting this issue after the first hearing.

Chair Samuelson said the next meeting will be 1-2 weeks after the first public hearing and that it needs to be decided how much time at this next meeting needs to be devoted to the public comments. If there is not a lot, then representatives from NEASC could be invited to discuss the accreditation process.

Adjourn

Gleason moved to adjourn; Lovett seconded. Chair Samuelson adjourned the meeting at 11:08 a.m.

Minutes prepared by Maureen Gaidys