



Act 173 Advisory Group  
June 6, 2022, 9:00 a.m. – 11:30 a.m.

## Draft Minutes

### **Microsoft Teams Virtual Meeting**

**Call In: 1-802-828-7667**

**Conference ID: 555 865 581#**

*Purpose of the Advisory Group per [Act 173 of 2018](#): To consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.*

#### ***Present:***

Advisory Group (AG) Members: Meagan Roy, Vermont Council of Special Education Administrators (VCSEA), Chair; Rachel Seelig, Disability Law Project (DLP), Vice Chair (joined at 9:37 a.m.); Jeff Francis, Vermont Superintendents Association (VSA); Sue Ceglowski, Vermont School Boards Association (VSBA); Peter Garrecht, Vermont Council of Special Education Administrators-selected special educator; Jeff Fannon, VT-National Education Association; Karen Price, Vermont Coalition for Disability Rights; Jay Nichols, Vermont Principals' Association, (VPA); Brenda Fleming, VT Association of School Business Officials (VASBO); Lisa Bisbee, Special Education Teacher/VT-NEA; and Mill Moore, Vermont Independent Schools Association (VISA).

AOE: Meg Porcella; Chris Case, Maureen Gaidys.

Others: Susan Aranoff, Marianna Donnally

#### **Call to Order, Roll Call/Introductions/Amendments to Agenda**

Chair Roy called the meeting to order at 9:07 a.m. and reviewed the agenda. There were no amendments to the agenda.

#### **Review and Approve Minutes from May 2, 2022 Meeting**

Nichols moved to approve the meeting minutes from the May 2 meeting; Francis seconded. There was no discussion. Chair Roy called the vote; the vote passed, and the minutes were approved. Yeas: Fleming, Nichols, Francis, Price, Bisbee, Garrecht, Ceglowski. Abstentions: Fannon. Absent: Forest, Krompf, French, Moore.

#### **Opportunity for Public to be Heard**

Chair Roy asked if there were any members of the public to be heard. There were none.

#### **Discussion: Public comment on Draft Maintenance of Effort (MOE) Documentation Guide**

Chair Roy referenced the [revised draft of public comment on the Technical Manual on Documenting Maintenance of Effort](#) that was emailed to AG members on May 27, 2022 and apologized for sending it so late. She explained that the goal is to finalize public comment from the AG and provide that to the AOE by the deadline (end of day June 6, 2022). She asked if there were questions. She gave additional context on the work of the stakeholder group. One of the first questions asked of AOE representatives was to help the group understand how the federal requirements for documenting MOE and how the state requirements/working draft aligned with those requirements. That key question has been an open one for

some time and therefore some of the member organizations sought additional input from the Office of Special Education Programs (OSEP). The AOE draft has taken the approach that MOE documentation should be consistent with the way LEAs document costs spent with federal dollars under IDEA-B. The concern raised throughout the conversation is that the documentation for federal grants is significant and decreases flexibility. Information from OSEP and the Federal Education Group (FEG), supported that there is no legal requirement to conflate documentation under IDEA-B and documentation for MOE. There are very few federal requirements on how states ask LEAs to document MOE. The updates to the comments center around that premise. Chair Roy said that VCSEA is concerned that the approach the AOE is taking is not in keeping with federal requirements and if it goes forward, districts are left with the same cumbersome method of documenting that existed pre-Act 173. It minimizes flexibility and does not minimize paperwork, both intents of the law.

There was discussion. Nichols said the VPA was/is supportive of Act 173 and VPA is against anything that requires extra documentation beyond what the federal government requires and goes against the intent of the legislature. VPA supports this because 1) will reduce/slow special education costs over the long run 2) gives school districts more flexibility and helps with Tier 2 and 3 instruction, and 3) will allow schools to use teachers in a way that best supports students' learning. This appears to add an extra layer that is not required or necessary.

Bisbee offered several examples in-practice concerns of Act 173: special educators could meet with students and intervene before students are determined eligible and conversely regular educators could also be offering interventions. There is flexibility of who is providing interventions; restrictions on groups sizes and numbers of special education students vs. general education students; having several administrative assistants who can complete a lot of the documentation. Chair Roy added that under Act 173, everything that Bisbee said is allowed, but under the current draft technical guide these would not be able to count toward MOE and one of two things will happen: 1) risk of district not utilizing the flexibility or 2) will allow flexibility but it will not count toward MOE and the district will be at risk of losing federal funds.

Francis said the VSA is agreement with all the comments already made, both thematically and contextually. He added that with the pandemic, the intentions of this Act are more important than ever. That whatever simplicity can be brought to the delivery system, flexibility to provide better support for students, and the delineation of general and special education, are more important than ever. This makes public comment from the AG and the ability to work with the AOE all more important.

Price said that from the parents' perspective, the increased flexibility can improve inclusion and decreased documentation can provide more direct services. She stressed that they do not want special education services diluted because of this and that multi-tiered system of supports (MTSS) is not used to delay or deny special education services. She is not sure of the rationale of AOE's language, but MTSS is seen as a barrier to the provision of special education services. Chair Roy clarified that having the ability to document MOE with a broader definition of what is in support of special education, helps to keep special educators spending their time teaching not documenting and she doesn't believe it waters down those services.

Moore asked for what the outlook was on hearing back from the AOE on why they have taken the direction they did. He added that during the revision of Rules Series 2200 that there were several misunderstandings

discovered as to how things work in the independent school world, and he wanted to ensure that was not happening again. Case said he would follow-up with AOE. Chair Roy said she believed that AOE thought consistency would make it easier, but it was realized that makes it more restrictive. She said the AOE was open to suggestions and there is room for more conversation.

Fleming spoke VASBO supporting this because of the flexibility without the onerous time study calculation and crazy rules. They wanted teachers to do what they do best – and support students. The documentation put undue stress and burden on the special educator to do what is best for students. She asked what is next and how to move forward. She revisited the information provided from FEG back in July 2019. She said it outlined things that have been lost since then (definition of special education and policies). She feels like with such a monumental change in policy that there should be a way to meet MOE requirements that don't require the same amount of dollars to be spent in the same fashion. The last thing we want to see is the same, similar, or worse paperwork requirements when the intention was the exact opposite. Fannon agreed with previous comments. Fleming said she believes the AOE wants to help sort this out, but we are all feeling the stress and pressure of time.

Chair Roy went through the [revised draft of public comment on the Technical Manual on Documenting Maintenance of Effort](#) piece by piece. She clarified that the public comment being offered by the AG does not comment line-by-line on the document but instead makes a recommendation to the AOE to rethink their entire approach to documentation. There is also a recommendation to consult with others on alternatives.

There was discussion on adding a comment to address Price's concern, raising the issue with the AOE that this might need to go through the formal rulemaking process so that applications can have the full authority, violation of Administrative Procedures Act (APA), risk of entities not following the guidance because it is not binding, potential filing and litigation. Chair Roy asked if the AG agreed to include issues related to need for rulemaking vs. guidance. There was general agreement. Chair Roy asked for a motion to allow the Chair to submit this public comment with edits as discussed to the AOE on behalf of the Act 173 AG. Seelig moved; Fleming seconded. There was no further discussion. The motion passed. Yeas: Fleming, Nichols, Fannon, Francis, Price, Bisbee, Moore, Garrecht, Seelig, Ceglowski. Nays: none.

### **Discussion: 2022-2023 Advisory Group Workplan**

Chair Roy shared that a new schedule was distributed to AG members and the first Monday of the month schedule would be maintained with a few exceptions. The AG will not meet this summer and will resume on September 12, 2022. She wanted to plan time for this group as it will sunset by the end of next school year. She will provide a draft work plan in September. Topics considered for the next year are:

- Professional development (is critical and the one that the AG has spent the least amount of time on) statewide self-assessment concept and looking at data and recommendations coming out of the AOE's review of what districts are looking for
- Revisit the impact of the weighting study (and only one more opportunity to give feedback to the General Assembly)
- MOE technical guidance and if/how we should change direction
- Guidance on the Adverse Effect and Specific Learning Disabilities (SLD) determination rules and offering advice to the AOE on how that should be rolled out
- MTSS rule

- Final report to the General Assembly

Chair Roy said the next meeting would be Monday, September 12, 2022 and meeting will remain virtual through the end of the calendar year.

### **Adjourn**

Chair Roy adjourned the meeting at 10:13 a.m.