

Draft Meeting Minutes

Meeting Place: McFarland House

Address: 5 Perry Street, Penthouse Conference Room #315

Date: May 6, 2019

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 Members: Meagan Roy, VCSEA; Daniel French, AOE; Tom Lovett, CIS; Jeff Francis, VSA; Mill Moore, VISA; Jeff Fannon, VT-NEA; Jay Nichols, VPA; Cheryle Wilcox, DMH; Lisa Bisbee, VT-NEA Special Educator; Karen Price, parent member, VCDR; Marilyn Mahusky, VLA/DLP; Nicole Mace, VSBA; and Brenda Fleming, VASBO.

Others: Philip Eller, VATF; Julie Staub, Stern Center; Traci Sawyers, VCSEA; Chelsea Myers, VSA; Marianna Donnally, DMH; and Susan Marks, (via phone).

Agency Staff: Alena Berube, Judy Cutler, Chris Case, Clare O'Shaughnessy, Emily Simmons, Maureen Gaidys.

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

Chair Roy called the meeting to order at 9:23 a.m. and asked for introductions; Susan Marks participated via phone. Members introduced themselves: Fannon, Mahusky, Mace, Lovett, Price, Fleming, Francis, Bisbee, Moore, Nichols, Wilcox, French and Roy. Chair Roy asked to add the discussion of H.521 as an adjustment to the agenda, following the Secretary's report.

Review and Approve Minutes from March 4, 2019 Meeting

Chair Roy asked for a motion to approve the minutes from the April 1. Nichols moved; Fannon seconded. Chair Roy called the vote. The vote passed unanimously.

Opportunity for Public to be Heard

Chair Roy asked if there were any members of the public who wanted to speak. There were none.

AOE Legal Team Update

Emily Simmons, General Counsel, introduced herself; Attorneys Judy Cutler and Clare O'Shaughnessy also introduced themselves. Simmons offered that the legal staff was available today per a request from the group for a Q&A session. She explained Susan Marks' role – that she is a consultant on contract with the Agency of Education (AOE) and provides legal opinions and has been closely involved in the rules discussion. She spoke about the desire to be good partners to this group, that there needs to be consideration given to the strategic use of resources, that the legal team is giving their full attention to these rules, that O'Shaughnessy and Simmons have been supporting this process even if not present at all meetings, and that Cutler is a licensed attorney and has experience in special education. She spoke about possible confusion about the AOE's role in providing legal

opinions to this group, and that the perception might be that they could be neutral and settle questions, but the AOE attorneys represent the AOE as the SEA.

Simmons discussed the role of the Advisory Group to consider and make recommendations on the implementation of a census based model of funding for students who require additional support; to advise the SBE on the development of proposed rules prior to the submission of the proposed rules to ICAR; to advise the AOE and supervisory unions on the implementation of Act 173; and to recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of Act 173. She explained the role of the AOE legal team as representing the SEA in ensuring that the state fulfills duties under IDEA, administering state role in dispute resolution (due process, administrative complaints, mediation), providing drafting services and rulemaking process supports to SBE, and informing the AOE's work in Act 173 implementation, particularly in Section 20(a) (independent schools).

There were questions/discussion on the AOE working to reduce paperwork, if a side-by-side of IDEA had been completed, what is required by the state, connecting with other SEAs, Maintenance of Effort (MOE) for fiscal monitoring and programmatic monitoring for other states, Vermont's somewhat unique statewide funding formula, how other states are implementing MTSS on this continuum and changes to the MTSS field guide.

Simmons said that she hoped to instill some confidence by introducing the staff that is involved in this work. Chair Roy asked for further questions, as it was requested that the legal team attend this meeting and to give an opportunity to get all questions asked.

There was discussion on the Advisory Group's trouble-shooting role, that the expertise of this group is not being tapped, how to structure these meetings to better utilize members as assets to the process, challenge of posing questions that are not answerable when asked, that this group meets eight times a year and this is the seventh meeting, audience of the General Assembly, State Board of Education (SBE) and advising the AOE on implementation, low level of input from this group on the text of the draft rules, lack of clarity on how much feedback was requested, delay as a pivotal issue, need for an AOE work plan, that AOE directs the work, variability in systems' capacity across the state, parallels between the Act 153 and Act 173 process with the latter being much more complex, establishing better markers for this group, roles of the AOE and the Advisory Group, resolution of differences is important, importance of real time, expectations, responsiveness, feeling that the AOE is resistant to hearing feedback from stakeholders, limiting input is problematic, that there will be plenty of opportunity for public input now that the SBE has the draft rules, and formalizing the collective feedback of the Advisory Group for the SBE.

Rules Process Update

Cutler responded to Mahusky and Roy regarding the struggle with the Act 173 team and what they are looking for and collective feedback as a product of engagement. She apologized if she had been unclear with expectations of the Advisory Group and shared that the timeline has been very difficult, and she has struggled with balancing receiving and incorporating feedback with this aggressive timeline. She spoke about proceeding as if there was no delay because at this point, there is no delay and the timeline already shows that the process is running behind schedule.

Cutler spoke about the document titled "Presumptive Act 173 Rulemaking timeline" that detailed the process. The SBE will discuss this item at the May meeting and will vote on it at their June meeting.

She explained that if one deadline was missed, the entire timeline would adjust. After Interagency Committee on Administrative Rules (ICAR), there is a requirement that the rules cannot be filed with the Secretary of State (SoS) until 15 days later, then the Public Comment period opens. The first possible date for a public hearing is August 9, and it is likely that there will be more than one. After the last public hearing, there is a waiting requirement of seven days. On September 18, the SBE will likely see the rules and any changes before they are filed with the SoS and Legislative Committee on Administrative Rules (LCAR). Adopted, finalized rules can be filed with the SoS within 45 days and will go into effect 15 days after adoption. The SBE could have a special meeting and alter this process. There is no consequence for missing the deadline. Cutler believes that that SBE will sacrifice the deadline in lieu of a very robust public input process. Cutler highlighted that there are a number of opportunities to have input in this process.

There were questions/discussion about H.521 regarding Act 173 delay, which has been combined with language regarding Act 46 delay, and concerns that Act 173 is effectively being held hostage because of political theatrics not because the Legislature isn't in agreement that delay is needed. July and August are a difficult time to hear public comment, that the SBE is also concerned with having public comment over the summer, Title 3 V.S.A. section 832(b) and the implications for local school districts for the rule, that the law says the Advisory Group will advise the SBE, that it's not theatrics on delay but lack of good information on the cost implications of delay, and that there is an efficiency aspect to this law that wasn't highlighted by the group and has not been present in the Legislature.

Policy, Procedures & Technical Guide for Act 173 Documentation

Chair Roy spoke about the current set of rules referencing state procedures around cost documentation and that the AOE would talk about the technical guide for cost documentation. Chair Roy asked for Advisory Group members to be clearer in communicating and that their requests for information are not for reporting back, but advice for the AOE that this is an important component for consideration.

Simmons spoke about fine tuning the details – practice and procedures internal to the AOE, federal requirements, not adding any more burdens on school districts than what is required by law. She shared a draft document of FAQs that came from a good discussion with Vermont Council of Special Education Administrators (VCSEA). Simmons suggested the group familiarize themselves with this document and identify any questions or missing information via email, to her directly, by next week.

There was discussion on expectations and input, using judgement to engage multiple stakeholders to include this group, finalizing this document in the next month, and directing feedback to others besides AOE. Chair Roy asked if the group wanted to recess and give feedback on the FAQs document or move ahead with the agenda. The group wished to move ahead with the agenda and have individual members spend more time giving Simmons feedback directly by next week. There was discussion on AOE's interpretation of the federal regulations, that the work plan is on the front burner, need to be specific to the SBE, trajectory of rulemaking, and the need for iterative document.

There was a question about the June meeting; this needs discussion but is scheduled for June 3.

Independent School Rules Update & Discussion

French spoke about an internal discussion that looked at federal law and Act 173 specifically and produced a framing document that was sent out to independent schools and education partners; this was not sent to Advisory Group members but will be shared with them. This internal group will meet

with independent school representatives at the end of the school year. French said that based on analysis of federal requirements and SEA/LEA responsibilities, it is not permissible or advisable to give block grants to independent schools and that he is working on moving forward and working on prototypical service agreements and a model of how this could be structured, similar to what the Agency of Human Services (AHS) does. The rate would be established at the state level. French said he would provide this document to the Advisory Group; detail work will follow the initial framing.

There was discussion on rate-setting and the model contract addressing excess cost challenges, whether it was clear when the legislation passed that block grants could not go to independent schools, the advisory group making recommendations to the Legislature, legal construct that allows the SEA to give block grants to the LEA but would prohibit the LEA from using a similar approach through its agreement with its providers, that there is a lot to flesh out and not prepared to do this with specificity today, who would be included in the independent school discussion to develop a prototype, interest in additional rules and other projects needing coordination, role of the Advisory Group, working within constraints around how this responsibility can or cannot be transferred, that legislation anticipated that the independent school piece of Act 173 would not be concurrent with an effective date of 2022, and a work plan to include giving some feedback to the Legislature.

AOE Update

Chair Roy asked French to share his thinking around the delay of Act 173. French said at the last meeting he was not committed one way or another to a delay and since then he had a very productive meeting and crafted testimony for the Legislature on this issue; this was also sent to Advisory Group. This testimony addressed the capacity of AOE and systems capacity of the districts, connection between the financial model and the change in practice, proposal that a delay would be appropriate, delay would be in the financial implementation to maintain the FY 2025 target, but to extend by one year the time districts would work under the reimbursement model.

Chair Roy distributed the latest version of H.521 for discussion. She wondered if the Senate Education committee needed to hear from the Advisory Group. Mace asked for clarity on the timing and the financial implications of the delay. There was discussion on unpredictability of the costs, need to understand what would be involved if this change is not made until January, the \$40 million cost of delaying a year, that it is hard to predict what the SBE will do, concern over decision-making process of the SBE and the importance of advising them, problematic that something as specific as this has fallen subject to the political process, SBE needs to hear from the Advisory Group regarding rules, discussion on how to get input to the SBE.

Mace suggested having a member from this Advisory Group attend the May 15 State Board meeting and deliver the message of this group and collective areas of concern. Individual stakeholders group can address the SBE with their own individual concerns at any time. Chair Roy said she is available to attend the May 15 SBE meeting and will draft something to share with the group for feedback, prior to presentation at the SBE. She said that based on multiple demands, it is important to have another voice of the Advisory Group, which is why she would like to have a vice-chair. She will contact the SBE and ask for time on their agenda.

The law states 8 meetings a year and she suggested that they determine the year themselves based on the work that needs to be done. She asked if there were useful, productive topics of discussion for June. French said this depends on the delay, the independent school meeting and the work plan. Mace expressed hesitation on waiting until August to meet since Professional Learning calendars are

somewhat set firmly by that time. Nichols suggested meeting in July. Roy concurred. Gaidys will use a Doodle poll to find a July date; the Advisory Group will not meet in June. Chair Roy will send draft of talking points in the next week or so, she advised the group to not reply all, but only to her individually.

Chair Request – Nomination of Vice Chair - Action Item

Chair Roy gave the rationale for having a vice-chair: so that the voice of this group could always be heard and that it wasn't all on one person to provide that voice and that meetings could move forward without her, if needed. Chair Roy asked for nominations. Nichols expressed interest. Fleming nominated Nichols for vice chair. Price nominated Mahusky. There was discussion on voting and a point of order made over whether Nichols was genuinely interested or just being agreeable. Mahusky said she was happy to take on this role; Nichols said he was happy to have Mahusky as vice-chair. Both motions were withdrawn. Mahusky is the vice chair.

Adjourn

Chair Roy adjourned the meeting at 11:37 a.m.

Minutes prepared by Maureen Gaidys.
