

**Final Report of the
Census-Based Funding Advisory Group
DRAFT**

January 15, 2023

Legislation

This report is submitted pursuant to Act 173 of 2018 Sec. 9 (f) to the House and Senate Committees on Education and the State Board of Education with “a status of implementation under this act and any recommendations for legislation.”

Background

Act 173

Act 173 of 2018: An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.

The Act changes the funding model for special education from a reimbursement model to a census-based model. This new model allows more flexibility in how funds can be used, simplifies administration of funds at both state and local levels, and aligns with policy priorities, including the opportunities identified in the **2016 District Management Group (DMG) report**.

The act reinforces Vermont’s commitment to comply with all provisions of the Individuals with Disabilities Education Act (IDEA) with an emphasis on maintaining state and local funding levels. Additionally, the act ensures that all students eligible for special education receive a free and appropriate education in the least restrictive environment in accordance with an Individualized Education Program (IEP).

Charge of the Group

The Act created the Census-Based Funding Advisory Group “to consider and make recommendations on the implementation of a census based model of funding for students who require additional support.” Specifically, the Group is charged with the following:

- “[A]dvice the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;
- [A]dvice the Agency of Education and supervisory unions on the implementation of this act; and
- [R]ecommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, 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.”

Membership

The Act defines the membership of the Advisory Group as follows:

- The Executive Director of the Vermont Superintendents Association or designee;
- The Executive Director of the Vermont School Boards Association or designee;
- The Executive Director of the Vermont Council of Special Education Administrators or designee;
- The Executive Director of the Vermont Principals' Association or designee;
- The Executive Director of the Vermont Independent Schools Association or designee;
- The Executive Director of the Vermont-National Education Association or designee;
- The Secretary of Education or designee;
- One member selected by the Vermont-National Education Association who is a special education teacher;
- One member selected by the Vermont Association of School Business Officials;
- One member selected by the Vermont Legal Aid Disability Law Project;
- One member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;
- The Commissioner of the Vermont Department of Mental Health or designee;
- One member who represents an approved independent school selected by the Council of Independent Schools; and
- One member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

As of the writing of this report, the Advisory Group has convened 38 times. Per Act 28 of 2021, the Advisory Group shall cease to exist on June 30, 2023.

Report #5 to the Committees on Education and State Board of Education

Introduction

This report represents the culminating and final summary of the work of the Census-Based Funding Advisory Group (previous Reports can be found on the [Census-Based Funding Advisory Group website](#)). Since 2018, the Group has met on a regular basis to inform the Agency of Education, State Board of Education and the General Assembly regarding implementation of the Act. The Group continued its work throughout the COVID19 pandemic and the resulting (unprecedented) impacts on public education. **Throughout its time together, the Group has continued to affirm that the educational structures of MTSS required under Act 173 are critical to improving outcomes for struggling students in Vermont.**

Despite the clear and positive impact these support systems will have on education in Vermont, implementation of the Act has not been smooth. In total, Act 173 has been fully delayed two times, and partially delayed (rule implementation) a third time because of a recognition of the significant work

needed in Vermont districts in order to adequately implement the shifts in instruction to better meet the needs of all Vermont learners. While the Advisory group unequivocally believes that Act 173 is critical for the development of robust and equitable educational support systems in our schools we are also keenly aware of the implementation challenges that continue to plague districts across the state. In this, the final report of the Group, we will highlight the challenges that persist.

It is also important that the Group highlight its approach to the work of advising Act 173 implementation. Early on, the Advisory Group recognized the importance of reaching consensus in its recommendations. Using a combination of full group discussions, small group work and stakeholder involvement, we organized our work to attempt to achieve full consensus at all times. For those issues in which full consensus was not reached, the Group informed the General Assembly regarding the areas of agreement and disagreement.

Because this is the final report to the General Assembly, it is organized to provide a brief summary of the work to date in each area, with a description of final recommendations the Group is making to close out its work.

Advise the SBE on proposed rules

1300/2360 Series (Special Education Funding & Programmatic Rules)

A significant portion of the Advisory Group's work since passage of the Act was focused on providing input and feedback to the State Board of Education regarding "...the development of proposed rules to implement this act...(pg 44)". Per its charge, the Group initially focused on those areas of the Rules they believed necessary to implement Act 173. As a result, the Group worked primarily on the 2360 and 1300 Rules Series, emphasizing that the resulting rule changes would allow districts to fully implement the Act. Feedback focused specifically on: ensuring that the new rules would allow districts full flexibility in use of funds; simplifying and streamlining any documentation related to the revised funding rules; and preserving the integrity of services for students with disabilities.

In addition to those rules that were required for implementation of Act 173, a number of other changes were proposed to the special education rules as a result of the public comment process. Most impactful were changes to how the construct of Adverse Effect is documented in the evaluation process and implementation of a Response to Intervention model for eligibility of specific learning disability (SLD Identification). The Advisory Group played a significant role in informing those discussions with the State Board.

As a result of continued concerns about the readiness of LEAs to implement the Rule Changes, the General Assembly delayed implementation of the Adverse Effect and SLD Identification rules; they will now go into effect on July 1, 2023. The Advisory Group has continued to inform the Agency on recommendations regarding professional development for LEAs in these areas; those recommendations are summarized below.

2200 Series (Independent Schools)

Act 173 also required that the State Board revise the 2200 Rule Series related to the independent school approval process. The Advisory Group was also charged with informing that process. Similar to its methodology for providing input to the special education rules, members of the Advisory Group met with a stakeholder group for more than a full year, informing the development and revision of the 2200 series rules. Two areas of particular importance for the stakeholder group were non-discriminatory enrollment practices, particularly as it pertains to disability; and the rate setting process for independent therapeutic schools so that there are assurances that public special education dollars are being spent prudently. Ultimately, the Advisory Group **endorsed** the draft Rules that were informed by the stakeholder group and later opened for public comment during the 2021-2022 school year.

However, after a significant number of public comments raised the same two primary issues of importance to the Advisory Group (non-discriminatory enrollment practices and rate setting for therapeutic schools), the State Board convened a subcommittee on the 2200 Series Rules and asked that the Advisory Group discuss whether they would recommend changes to the SBE's current draft in light of the public comments. The Advisory Group ultimately agreed that changes were warranted and members of the Group advised the State Board's subcommittee. Ultimately, the State Board did adopt the revised 2200 series, which are slated to go into effect on July 1, 2024.

Advise AOE and supervisory unions on implementation

The issue of professional development has long been part of the Advisory Group's discussions. Early on after the adoption of the Act, it was clear to the Group that in order to fully realize the potential of the Act, school districts would need to have the capacity to fully implement a multi-tiered system of supports. It also recognized that there was significant variation in LEAs ability to implement the law. The Group made strong recommendations to the Agency that a comprehensive plan be developed that would:

1. Identify the evidence-based practices and framework for implementation
2. Design a multi-disciplinary model for professional development that would be accessible to districts at all levels of implementation
3. Identify those districts that would need significant support in implementation so that professional development resources could be targeted
4. Develop an accountability mechanism for ongoing implementation monitoring

Over the course of its existence, the Advisory Group has continually shared concerns about the Agency's capacity and ability to deliver on those recommendations. Indeed, much of the Group's feedback regarding implementation delay centered around what it saw as a lack of professional development capacity at the Agency, which translated to a lack of readiness in LEAs. These concerns persist even at this point in the Advisory Group's work. Below are two ongoing areas of concern for the Group.

Professional Development for MTSS and Associated Rule Changes:

The Advisory Group continues to have significant concerns about the magnitude of implementation impact for LEAs related to Act 173 and the two additional and significant changes that school districts are required to implement as part of the 2360 Series. The timeline of release of AOE guidance left little time for districts to adequately train their special education and general education staff. A full technical description of how the rule changes impact schools continues to be beyond the scope of this report; however, it remains clear to the Advisory Group that limitations in professional development support for the rule changes is lacking.

The Agency of Education has released a number of guidance documents outlining what they see as the “pillars” of implementation for MTSS. While these documents are an important component of professional development, it continues to be the opinion of the Advisory Group that a much broader and deeper understanding of the MTSS implementation will be required for successful implementation of the Act. The Group reiterates its concern with what it believes is a lack of adequate, targeted support for LEAs related to MTSS. This has now been magnified by the additional requirement to be prepared to implement the Rule changes in 2023.

Documentation of Maintenance of Effort:

In addition to advising the Agency regarding professional development, the Group has focused a significant portion of its final year advising the Agency on documentation requirements for the Federal construct of Maintenance of Effort (MOE). It has long been a concern of the Group that the Agency was erroneously holding on to highly restrictive documentation efforts that would prevent districts from realizing the flexibility intended under the Act. As recently as the Fall of 2022, the Group has been engaging with members of the AOE team to inform the development of guidelines, examples and Frequently Asked Questions documents designed to maximize flexibility while preserving the ability of an LEA to remain aligned with Federal requirements.

It continues to be a firm recommendation of the Group that the Agency leadership be involved with ground-level staff as it understands Maintenance of Effort to ensure that requirements are not developed that exceed Federal documentation standards.

Recommendations to General Assembly for necessary Statutory changes

The Advisory Group is required to make recommendations for any necessary statutory changes to the Act. The primary issue that the Advisory Group has engaged with the General Assembly since 2018 was the implementation timeline, informing the discussions regarding implementation delay. The change to the funding system did go into effect on July 1, 2022, followed by implementation of the 2360 Rule Series changes on July 1, 2023.

Adjustments to the Calculation of the Census Grant

Since 2018, the Advisory Group has heard testimony from a small number of LEAs who raised concerns about the calculation of the census grant. Currently, the census grant is calculated by a district’s average

enrollment (ADM) rather than *equalized pupil count*. Concerns were raised that this does not take into account demographic differences within a school district. A statewide education **funding study** acknowledged that a census grant assumes roughly similar rates of IEP identification across districts, which Vermont does not have. During its considerations of whether to recommend a change in calculation, the Advisory Group discussed the parallel legislation around Pupil Weighting. It concluded that before recommending changes to the census grant calculation, implementation of the revised pupil weights would be essential. Therefore, the Group is not formally making a recommendation to change the calculation at this time. It may be an issue that the General Assembly should consider after duly reviewing the impacts of the pupil weight changes.

Respectfully submitted on behalf of the advisory group by:

Meagan Roy, Ed.D.

Chair

Agency of Education