

Approved Independent Schools Study Committee

Draft Meeting Minutes

November 17, 2017

Present:

Committee members: Senator Philip Baruth, Chittenden County; Representative Emily Long, Windham County; Nicole Mace, VSBA; C.J. Spirito, Rock Point School (CIS); Seth Bongartz, VISA; Jeff Francis, VSA; Jo-Anne Unruh, VCSEA; Rebecca Holcombe, AOE; Michael Livingston, Sharon Academy (CIS); Bonnie Johnson-Aten, Vermont State Board of Education (arrived at 1:10 p.m.)

Agency of Education: Suzanne Sprague, Molly Bachman, Haley Jones

Others: Mill Moore, VISA; Tiffany Pache, VTDigger.org; Maggie Lenz, Ellis-Mills; Patti Komline, VISA; Todd Bailey, LPA; Jim DesMarais, Legislative Council; Toby Howe, MMR; David Rice, WCMHS; Emily Simmons, VSBA

Senator Baruth convened the meeting at 1:05 p.m. He said that there is one more meeting following the current meeting. Senator Baruth said that he feels the last meeting will be spent reviewing a draft report of the committee's work. He continued that he doesn't feel the work will be complete when the meetings are done. Senator Baruth said the committee has a good handle on the financial disclosure and a direction to move towards with regards to special education. He added that there is still work involved with the intricacies of reimbursement.

Senator Baruth said that the work the committee has done will bring forward possible legislation. The draft that Jim DesMarais, Legislative Council, has been working on will make its way as a bill routed through the Senate Education Committee in January. Committee members will be invited to testify as work continues on the legislation. Senator Baruth said that the topic will not be rushed and no one will be forced to agreement in the next meeting.

Mace asked for clarification on whether the committee was to produce a report or write legislation. Senator Baruth said that he anticipates producing a report and whatever the committee has agreed on in the current draft language will be forwarded through the legislative process and picked up during the first week of the legislative session. Secretary Holcombe asked if the draft that is being produced is the Legislator's piece of work and is he inviting the committee's input on the draft or is he asking the committee requested to endorse it. Senator Baruth said that is a question that will be discussed at the final meeting to include the extent the committee wants to sign on to any of the language. He continued that the draft legislation to date is mostly a product of his wording and his work with DesMarais.

Secretary Holcombe asked Senator Baruth if he has considered that the federal IDEA may be changed in the next year. She added that typically legislation written in the special education arena is broad because rules are more responsive to changes. Secretary Holcombe said that there are contradictions

between federal law and the current draft and she questioned if the discussion should take place in this setting or in committee. Senator Baruth said that any contradictions should be brought forward sooner rather than later. Discussion followed between Senator Baruth and Secretary Holcombe regarding risk, rulemaking, legislation, progress of the committee and timeline. Johnson-Aten said that she was unaware that the end result of the committee's work was a bill. Mace read the actual legislation which states that, "On or before December 1, 2017, the Committee shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and any recommendations, including recommendations for any amendments to legislation." Mace said the question is whether the committee thinks amendments to the law are needed and if so, the committee has not discussed what needs to be accomplished in legislation and why.

Baruth said the committee could suggest that the State Board take the process over. Bongartz said that the Approved Independent schools would prefer something in statute rather than the State Board handling it. Mace asked Bongartz to explain in his opinion, the difference between the two. Bongartz said that the State Board was charging ahead and trying to get the rules through the system in a way that was entirely destructive to the independent school system. Secretary Holcombe said that she spoke to the State Board of Education Chair and said that she suggested she was willing to push pause and take time to work out the very complicated issues involved.

Senator Baruth read the language regarding rulemaking from Act 49, "Continuation of Rulemaking. It is the intent of the General Assembly to resolve the issues raised by the State Board of Education's proposed amendments to the 2200 Series..." He said that this is a direct statement of legislative intent that the Legislature is no longer delegating this function to the Board. Senator Baruth said that the Legislature means to extend in statute that the Approved Independent Schools will serve special education students. Senator Baruth said he is happy to take a vote at any time. Further discussion followed regarding approved independent schools providing special education services. Senator Baruth asked Johnson-Aten to go back to the Board and ask the Board's opinion on a new proposed timeline for rulemaking on the Rule 2200 Series if that is the direction the Committee wishes to pursue. Further discussion followed on the three approaches to rulemaking by the Board, the process of working through the Legislature or pausing the rulemaking around Rule 2200 Series.

Senator Baruth asked for input from the committee on the new draft language that was supplied around enrolling a special education student to an Approved Independent School. He called Jim DesMarais to address the committee and field questions regarding clarification to the draft language. Bongartz said the Approved Independent Schools are less concerned around reimbursement and more concerned regarding the staffing. Mace said the language treats the student as if they were assigned versus the student having a voucher to attend any school. Livingston wondered what the likelihood was that a student with severe special education needs would be placed in a small independent school with 10 – 20 students if that school has access to a special educator but not a special educator on staff. He continued that it is not likely that small independent schools will see some of these kinds of placements and they're being tasked to do something that will likely never happen. Livingston said in a world of scarce resources why are the approved independent schools being asked to do this when the responsibility falls to the LEA. Discussion continued regarding placing students, costs, public funds, fairness to and rights of children. Senator Baruth asked the committee to draft broad statements that should be included in statute. He said to send them to him directly. Unruh said that the language should address the general education approved independent

schools and the specialized approved special education schools and include responsibility and reimbursement as well as parentally-placed students subject to federal law around pro-rated costs for special education services.

Senator Baruth invited Molly Bachman, AOE Legal Counsel, to address the committee regarding rate-setting and reimbursement processes.

Senator Baruth asked for committee members to e-mail him or bring to him any suggested general statements to be included in the legislative report, in the legislation, or both. He said there will be a straw vote regarding which path the committee thinks is the best way to move forward. Those options are: send the responsibility for rulemaking back to the State Board; address this through the Legislature; or, delay the rulemaking process. Mace said there should be a formal request to extend the due date since the committee ceases to exist on December 2, 2017. Senator Baruth said that he will speak to the president pro tem. Senator Baruth will forward an initial draft of the report for the Legislature to include a narrative and the introduction with the rest of the work to be completed at the final meeting.

The next meeting is December 15, 2017 from 1:00 p.m. – 3:00 p.m.

The meeting will be at the State House in room 10.

The meeting adjourned at 2:55 p.m.

Minutes recorded and prepared by Suzanne Sprague.