

## State Board of Education

### Draft Meeting Minutes

**Meeting Place: Virtual Teams Meeting/Video/Teleconference**

**Call in #: 1-802-552-8456, Conference ID: 230 267 09#**

**Date: February 16, 2022**

#### Present:

**State Board Members (SBE):** Oliver Olsen, Chair; Jennifer Samuelson, Vice-Chair; Patrick Brown; Tom Lovett; Jenna O'Farrell; Angelita Peña; Tammy Kolbe; Lyle Jepson; Kim Gleason; Gabrielle Lucci; and Dan French.

**Agency of Education (AOE):** Emily Simmons, Donna Russo-Savage, Patrick Halladay, Amy Scalabrini, Suzanne Sprague

**Others:** Sue Ceglowski, Vermont School Boards Association; Jay Nichols, Vermont Principals' Association; Jeff Fannon, Vermont National Education Association; Meagan Roy, Chair Act 173 Advisory Group; Mill Moore, Vermont Independent School Association; Mat Forest, St. Johnsbury Academy; Sean Toohey, Lynn, Lynn, Blackman and Manitsky, P.C.; Kelly Bushey, School Director Stone Path Academy; Mario Hankerson, Hankerson Law Group, PLLC; Stacy Anderson, Barre Unified Union School District; Kerra Holden, Washington Central Unified Union School District; Susan Aranoff, Vermont Developmental Disabilities Council

#### Item A: Call to Order/Roll Call/Amendments to the Agenda

Chair Olsen called the meeting to order at 8:02 a.m. and a roll call was taken. Lovett requested that a vote be added at Item N to consider the reinstatement of desk reviews to independent school approval process.

#### Item B: Public to Be Heard

Jay Nichols, Executive Director, Vermont Principals' Association – Spoke to allowing the Act 173 Advisory Group to meet, review and discuss the proposed language in Rule Series 2200 before the State Board takes a vote on the rules at its meeting.

Sue Ceglowski, Executive Director, Vermont School Boards Association - Spoke to allowing the Act 173 Advisory Group to provide feedback to the State Board on the proposed language in Rule Series 2200 before the State Board takes a vote on the rules at its meeting. Ceglowski said VSBA Board's position on mascots is that there should be a state-level solution and the solution should be developed by the legislature and should not involve the State Board of Education.

Jeff Fannon, Executive Director, Vermont National Education Association - Requested the State Board to delay its vote on the proposed language in Rules Series 2200 until its next meeting to allow the Act 173 Advisory Group to meet, review and discuss the proposed language.

#### Item C: Consent Agenda

Samuelson moved to approve the minutes from the January 19, 2022, meeting. Lovett seconded the motion. The motion passed unanimously.

### **Item D: Board Announcements**

Chair Olsen said an opinion was requested from the Attorney General (AG) on Stowe's request to withdraw from the Lamoille South Unified Union School District due to complex legal issues. The AG's office has circulated a document to interested parties for technical and factual corrections. A final draft of the decision is expected next week.

Chair Olsen said that he met with the Senate Education Committee on school mascots, Chapter 11 issues, and the independent school approval process.

### **Item E: Student Report**

Peña said things have settled down a bit at her school. Students are adapting to being back in the building and sticking to a schedule as well as staying home when sick. Teachers still need more supports than they receive.

Lucci said there is definitely less fear surrounding COVID-19 amongst students. There are still behavioral struggles at the school and the administration is working to deal with it. Students seem to be getting into a groove with school and are looking forward to the vacation to relax and recharge.

### **Item F: Update on Chapter 11**

Gleason said the process has been collaborative and thoughtful. The House Committee on Education has been in general agreement with the standards and process for withdrawal proposed by the State Board. The Committee will likely remove the State Board's ability to reject a withdrawal proposal. Instead, the State Board would issue a positive or negative advisory opinion and – if negative – the voters of the petitioning town would need to approve withdrawal by a supermajority. The process will also provide an off-ramp if the district decides that withdrawal is not a viable option.

### **Item G: SBE and AOE Roles and Responsibilities Report to the Legislature**

Kolbe provided a brief update on the activities of the subcommittee on delineating and restructuring the roles and responsibilities between the SBE and the AOE focusing on efficiency and policy coherence. She shared an updated [draft report](#) for the State Board's consideration that addressed the State Board's feedback from its January meeting.

Kolbe made a motion to approve the Roles and Responsibilities Report on behalf of the State Board of Education and to send it to the Legislature. Jepson seconded. There was no discussion. The motion passed unanimously.

### **Item K: State Assessment Vendor Request for Proposal (RFP) Update**

Secretary French said the state assessment is required under federal law. The state procurement process requires a bidding process for a vendor. Secretary French requested time on the March meeting agenda for the State Board to consider and vote on a vendor to provide the AOE ample time to negotiate a contract with the vendor that is selected. He suggested that a single State Board member be appointed to participate in the process. The State Board member could speak to a drafted recommendation from him at its March meeting.

Kolbe volunteered to participate. Lovett made a motion to designate Kolbe as the State Board of Education's representative in the RFP process. Samuelson seconded. The motion passed unanimously.

### **Item N: Independent School Approval Review Committee**

Lovett said that the committee met twice to review the current process for independent school approvals and how the Secretary's recommendation comes to the State Board. The committee will review the independent school approvals and discuss any concerns regarding the approval with the AOE. A school representative will be invited and not required to attend the meeting. A fully vetted recommendation will be brought to the full State Board for its consideration. Should Lovett have a conflict of interest due to his current teaching position, Brown will chair those approval discussions.

Lovett said the committee and the AOE reviewed the types of approvals, site visit checklists and how the AOE assesses compliance to non-discrimination law. There are 33 independent schools in the queue needing renewal or approval. After June 30, the number increases to 61 schools and after June 30, 2023, the number of schools is 85. Staffing challenges were discussed. The AOE understands the value of site visits and requested approval of desk reviews to help deal with the extensive backlog. Discussion followed regarding factors that would trigger a site visit, site visit schedules get derailed due to various reasons, many expiring on June 30, 2022, downside to waiting, strategies to clear the backlog, new Rule Series 2200 and approving the schools under the old rules and ensuring that independent schools receive public dollars.

Lovett said the committee will meet again soon and he will seek clarity from the AOE on what conditions the AOE would seek to use the desk review and establish the criteria to be used. Lovett will bring a recommendation to the full State Board for its consideration at the March meeting.

Chair Olsen called for a recess at 9:20 a.m. The meeting reconvened at 9:31 a.m.

### **Item H: Rules Series 2200**

Chair Olsen handed the gavel to Vice Chair Samuelson during Item H.

Chair Samuelson acknowledged the time and work put into Rule Series 2200, that it was close to completion and thanked all involved. Chair Samuelson reviewed that the full Act 173 Advisory Group (AG) voted to name a subgroup to work on nondiscriminatory enrollment practices. The subgroup disagreed about the interpretation of the rule 2229.4§(a)(2) "A school shall enroll all publicly funded students on a first come first served basis until capacity is reached". Much time was spent interpreting this sentence. Simmons released a memo that included three versions of rule 2229. The first was the draft filed with Interagency Committee on Administrative Rules (ICAR), the second was the language proposed by the Act 173 subgroup and the third version was drafted by the Rule Series 2200 subcommittee. The three versions were considered by the full AG, who were unable to reach consensus. Without consensus from the full AG, the Rule Series 2200 subcommittee spent time at its last meeting identifying and analyzing language that concerned some of the AG stakeholders and crafting new language that responded to the concerns.

Roy reviewed why it is important that the full AG weighs in on the current draft given the purpose of the AG to inform the development of these rules and explained that the AG fully endorsed the existing draft that went through public comment in the 2021 school year. Once the public comment

closed, some of the comments pertained to issues that the AG discussed in the last year. The AG was asked to reconsider the draft and decide whether it would recommend changes. The AG signaled that the timeline was aggressive and that they would try to meet it but that the priority would be to get the rules right and provide solid information to the State Board. The public comment was discussed at length by the AG, and it was agreed that clarification on enrollment practice would be prudent and that the AG would not recommend changes to the rate setting language. The subgroup was formed to work on language related to rule 2229.4§(a)(2).

Roy said that the rewrite was substantive, and they were not able to reach consensus. There were issues with not enough time to review the final draft wording, multiple versions in play and confusion with the AG, and if the full AG was considering the full rule language or just rule 2229. Roy respectfully requested that the AG have the ability to review the draft language. If the State Board acts at its meeting, it will be done without a decision from the full AG. The AG is scheduling a special meeting to review the full draft and to provide a recommendation to the State Board.

Olsen said the proposed action on the State Board agenda is not to adopt the final draft but to provide direction to Simmons to prepare a final draft. The State Board would schedule a special meeting prior to its March regular meeting to adopt the final draft. Discussion followed regarding the State Board following the APA timeline and filing due date with Legislative Committee on Administrative Review (LCAR) as March 15, and flexibility for an extension from the eight-month limit on rulemaking.

Simmons reviewed the [memo](#) and said the purpose is to summarize the various provisions within the entire rule that speak to principles of nondiscrimination. The second half of the memo provides a side by side of the rule filed with Interagency Committee on Administrative Rules (ICAR) and the most recent draft language by the Rule Series 2200 Subcommittee. She reviewed the memo in more detail. Discussion followed on rule 2226.3, open enrollment for all students, safeguards for Individualized Education Programs (IEP) and 504 meetings when a student enrolls in the middle of the school year and renaming rule 2229.1. Chair Samuelson led further discussion regarding updating rule 2229.4(a) which applies to when a student enrolls midyear in an independent school who requires special education services and renaming rule 2229.1. It was agreed that the word “promptly” be replaced with “within 30 days of the student’s acceptance of enrollment” and keeping the language “when practical the meeting shall occur prior to the start of the school year”. It was agreed that 2229.1 would be titled - Enrollment: Requirements for Approved Independent Schools, Publicly Funded Students and Local Education Agencies (LEAs).

Simmons reviewed the [Proposed Response to Public Comment – Remaining Issues](#). She reviewed the spreadsheet in numerical order and summarized the requested rule change in detail as well as the proposed responses. Discussion followed on nondiscrimination, organization of rule, definition of terms, branding and to use the current term BIPOC (Black, Indigenous, People of Color).

Lovett made the following motion: That the State Board of Education accept the remaining proposed recommendations of the Rule Series 2200 Subcommittee that are noted on the spreadsheet titled “Comments on Rule 2200 at the End of Public Comment Period” that was submitted and discussed at Agenda Item H to the Board’s February 16, 2022, meeting as either fully resolved or resolved with new or amended language and give provisional approval of them. Kolbe seconded the motion.

Discussion followed regarding pre-existing language for payment to out-of-state programs, out-of-state placement and being outside the purview of rulemaking. The motion passed unanimously.

Lovett made the following motion: That the Board delegate authority to the Rule Series 2200 Subcommittee to work with Agency of Education's General Counsel to prepare the final draft of the Rules which will then be brought before the full Board at a special meeting for its final review and adoption. Jepson seconded. There was no discussion. The motion passed unanimously.

Chair Samuelson handed the gavel back to Chair Olsen.

### **Item L: Stone Path Academy**

Secretary French said the Agency of Education is recommending a waiver to allow Stone Path Academy to continue to operate for the remainder of the school year with conditions that are outlined in the [Secretary's Recommendation](#). He said this was in the best interest of the students currently enrolled in the school. Chair Olsen added that it was a unique and unusual situation and allows the school a path to closure at the end of the school year. LEAs in the region are advocating for the continuation of the program through the end of the school year which will allow time for them to transition the students to the next appropriate placement, to ensure students have educational continuity and to avoid significant detrimental effects on the students and their families.

Discussion followed regarding staffing changes and challenges, Stone Path not accepting new students, LEAs taking over the school, no concerns with the health and safety of the enrolled students and ongoing oversight by the AOE. Jepson made a motion to adopt the Secretary's recommended action as written. Samuelson seconded the motion. There was no discussion. The motion passed unanimously.

Lovett made a motion to delegate monitoring of the conditional approval to the State Board's Independent School Approval Committee. Brown seconded the motion. Discussion followed regarding the committee's role in monitoring of Stone Path Academy. The motion passed unanimously.

### **Item J: Vermont Standards Board for Professional Educators (VSBPE) Waiver Process**

Halladay presented the [waiver process](#) of the Vermont Standards Board for Professional Educators (VSBPE). He explained the waiver process; waiver authority; and the waiver categories. Discussion followed on communicating the waiver process to prospective applicants, administrators being aware of waiver process, technical assistance from the AOE on a flexible path to licensure, different licensing process for Career Technical Education (CTE) instructors and the PRAXIS Core requirement, new Americans taking advantage of the program and other demonstrations of basic skills accepted by Vermont.

### **Item M: Public Engagement Forums**

O'Farrell reviewed the [public engagement forums proposal](#) based on the discussion from the State Board's previous meeting. Included in proposal are suggested dates and times, locations, and prompts. Discussion followed to include a diverse group of participants who have access to the forums, timing of forums, the proposed prompts, what the State Board will do with feedback, listening sessions, sharing feedback with the legislature, reflecting on feedback at the State Board



retreat, strong facilitation of forums to stay on task with designated prompts, priorities of the public, AOE recovery work, visioning exercise and setting expectations. Chair Olsen asked to move forward with the approach as outlined in the proposal. He asked to increase the time to two-hour sessions and to push the dates out.

### **Item O: School Mascots – Feedback on Proposed Legislation**

Chair Olsen provided background on the topic of school mascots. He explained the bill S.39 - An act relating to public schools' team mascots and how the Senate Education Committee's strike-all bill tasks the State Board with rulemaking on the topic to be complete by December 2022. He testified to the Senate Education Committee and said that his testimony expressed concern with the State Board promulgating rules around mascots and the lack of time for rulemaking. Additionally, the State Board workload includes opening the (Education Quality Standards) EQS rules and Act 1 rules. Chair Olsen offered another approach which is that the Legislature establishes reasonable statutory guidelines of acceptable branding. The State Board would be the arbiter of what is acceptable; develop an interim process to deal with the issue now; and the State Board would hear concerns and complaints and resolve any questions. He advised the committee that he would seek feedback from the full State Board.

Discussion followed regarding if the topic should fall under the purview of the State Board or the AOE, clarity on criteria to be used, funding to defray costs, quasi-judicial matter, getting in the way of other work, not a long-term issue, State Board is also an appellate body, standards, standards in statute, diverse community of people to represent the needs of all communities to determine what is and could be offensive, penalties of not following the State Board decision, recommendation from the AOE for State Board approval, State Board's capacity, process to seek input from those impacted or offended and the Act 1 Advisory Group.

Chair Olsen said that the State Board does not want to be the primary adjudicator. The AOE formulates a recommendation to bring to the State Board to act upon.

### **Item P: SBE Agenda, Workplan, Retreat Planning and Professional Development**

Chair Olsen asked members to send agenda topics for the next meeting to Vice Chair Samuelson and himself. A special meeting will be scheduled after the Act 173 Advisory Group has met to discuss the proposed language to Rule Series 2200.

### **Adjourn**

Gleason moved to adjourn; O'Farrell seconded. The meeting adjourned at 1:51 p.m.

Minutes prepared by Suzanne Sprague