

State Board of Education

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 474 897 168#

Date: February 17, 2021

Present:

State Board Members (Board): John Carroll, Chair; Jenna O'Farrell, Vice Chair; William Mathis; Kim Gleason; Sabina Brochu; Kathy Lavoie; Peter Peltz; Oliver Olsen; Jennifer Samuelson; Angelita Peña and Dan French.

Agency of Education (AOE): Emily Simmons, Maureen Gaidys, Suzanne Sprague

Others: Mill Moore, Vermont Independent Schools Association (VISA); Meagan Roy, Act 173 Advisory Group Chair; Bridget Asay, Attorney; Amanda Garces, Human Rights Commission; Xusana Davis, Executive Director of Racial Equity; Philip Eller, Vermont Autism Task Force; Sean-Marie Oller, former State Board of Education member; Kim Dougherty, Attorney, Andrus Wasgstaff, PC.

Item A: Call to Order/Roll Call/Introductions/Amendments to Agenda

Chair Carroll called the meeting to order at 9:06 a.m. and asked members to introduce themselves. There were no amendments to the agenda.

Item B: Consent Agenda

Consent Agenda:

Chair Carroll asked for a motion to approve the consent agenda items which included the minutes from the January 20th, 2021 meeting. Gleason moved to adopt the minutes; Olsen seconded. Chair Carroll offered edits to page 6 to change the "local LEA" to the "local school board". Chair Carroll called the vote to the consent agenda as modified. The motion passed unanimously.

Item C: Board Announcements, Student Reports

Board Announcements:

None

Student Report:

Brochu was excited that sports teams were able to compete again. Brochu gave an update on the student mental health survey. She and Peña worked with a UVM psychology professor who provided some resources. The survey questions were vetted as appropriate and the survey has been finalized. Brochu reviewed the first 12 survey questions. Peña explained the final question

and how bad habits such as nail biting could be a sign of mental illness. Discussion followed regarding school schedules, anonymity of the survey, which schools were participating in the survey, self-medication questions, liability issues with the survey, sensitive data and Family Educational Rights and Privacy Act (FERPA). Brochu asked the State Board members to share the survey with their contacts. She will reach out to the Vermont Principals' Association. Her hope was to have as many students as possible complete the survey.

Item D: Public to be Heard

Sean-Marie Oller, former State Board of Education member – expressed her gratitude to William Mathis who has served on the State Board of Education for many years. Mathis shared his wisdom and experience that impacted many students and his former State Board of Education colleagues. She acknowledged Peter Peltz as well and thanked both gentlemen for their years of service.

She wondered if there would be public comment under items H, J and K. She hoped that it would become clear where public comment on the proposed rule changes could be made.

Phillip Eller, Vermont Autism Task Force – said the Vermont Autism Task Force was appreciative of the rules committee and they are in support of the proposed changes to Rule Series 2360.

Item E: Chair's Report

Chair Carroll reviewed the timeline for the proposed rules changes used to track the work of four separate working groups. He explained the Administrative Procedure Act (APA) rulemaking as a four-stage process that includes: 1) Being directed by the General Assembly (GA) to open a rule or the State Board proceeds to open a rule; 2) Work with AOE and stakeholders to develop new proposals and make provisions for public comment; 3) Proposed Rule adopted and filed with Interagency Committee on Administrative Rules (ICAR); and, 4) Submit final rule to Legislative Committee on Administrative Rules (LCAR) and filed with the Secretary of State. SBE Rules 1300/2360 Committee was at stage 3. SBE Rules 2220 Rate-Setting Group and SBE Rules 2220 Committee were in stages 1 and 2. Additional public comment would be obtained when the rules were filed with ICAR. All public comment will be considered and may be incorporated into the final rule.

Chair Carroll said there were many bills proposed by the GA this legislative session. Proposed bills of interest to the State Board include: 1) H.180 – allow the dissolution of or withdrawal from a unified union school district to include schools that were directed to merge in the Vermont State Plan; 2) H.106 – centering a variety of health care services at community schools; 3) H.214 – establish statewide criteria for student proficiency-based education; 4) H.181 – make Proficiency-based Learning optional; and, 5) H.215 – create a single statewide school district. He added there were bills that would prohibit school resource officers; increase funding for school resource officers; require the SBE to define “religious school” and set standards for how religious schools could demonstrate that they were not using public tuition funds for religious education; and, dual enrollment for students that attend schools that do not accept public tuition.

Chair Carroll discussed the status of the proposal to reform the State Board to focus on big picture issues and be less involved in micro-managing the AOE. He explained the changes would give the State Board more bandwidth. He said there were 31 rule sets and many ought to fall under the AOE. During the previous legislative session, the Senate Education Committee drafted S.166 which divided the rules between the State Board and the AOE. The pandemic stopped the bill's progress. Since we are now in a new biennium, the bill would need to be reintroduced. Both House Education and Senate Education have expressed interest in reintroducing the bill.

Olsen said it would be helpful for the State Board to formally renew its supports of S.166. Olsen made a motion to authorize the Chair and only the Chair to speak on behalf of the State Board of Education before committees of the GA regarding proposals to reform the State Board of Education and to direct the Chair to express support for the framework established in Senate Bill S.166 from the 2020 Legislative session and oppose proposals that would substantially undermine the reform efforts that advanced in the Senate last year; Peltz seconded the motion. Carroll said the support would be helpful. He was often asked if the State Board was supportive.

Discussion followed regarding why the motion was necessary, more discussion needed at the State Board level versus giving unilateral authority, motion could potentially limit further negotiation and conversation, limiting conversation with the State Board as the bill progresses, framework of the bill and allowing for flexibility and expressing sentiment of the State Board. Olsen suggested restating the motion to authorize the Chair to express support for the framework established in Senate Bill S.166 from the 2020 Legislative session and to oppose proposals that would substantially undermine the reform efforts advanced in the Senate last year. Discussion followed regarding the change in the motion being subtle, being more specific with the authorities being delegated, communication to the State Board for bills that are in opposition to S.166 for State Board discussion, challenge of timing in the Legislature with the monthly meetings of the State Board, supporting the framework as opposed to opposing of what might change it and that there are ways to keep the State Board informed between meetings.

After extensive discussion and friendly amendment the Board voted on the following motion: "The State Board of Education authorizes the Chair to speak in support of the framework established in Senate bill S.166 of 2020 and to speak in opposition to proposals that would substantially undermine the reform efforts advanced in the Senate last year." Roll call vote: Yea - Brochu, Lavoie, Olsen, Peltz, Samuelson, O'Farrell, Gleason; Nay - Mathis. The motion passed.

Item F: Secretary's Report

Secretary French spoke about COVID-19. He said Vermont fared well during the holiday period and conditions have improved across the country. Vermont's cases are trending down slowly. Schools have been operating with few cases reported. Secretary French said the AOE work was focused on recovery as the conditions improve, warmer weather arrives, and the vaccination process continued. He said recovery means work done to mitigate the impact of the pandemic on students from an educational perspective which included feeding students, addressing their

socio-emotional well-being, engagement, etc. School districts would be required to have a recovery team and appoint a recovery coordinator. The first phase of the work would be to address the conditions at the district in three domains: 1) mental health; 2) re-engagement to address truancy issues; and, 3) academic success. The AOE will be supplying supports in addition to other agencies. The second phase would require districts to create plans to address their specific needs. The third phase would be implementation which would happen prior to summer particularly so districts could leverage federal dollars. Discussion followed regarding students who have fallen behind in schoolwork, decline in math skills, learning loss was not understood, using benchmark assessments, impact would vary among districts, in-person instruction was increasingly important and updating guidance if needed.

Item G: School Calendar Waiver Request

Olsen made a motion that the State Board of Education renew its authorization for the Secretary to, on the Board's behalf, consider and grant waivers of up to 10 school days for unanticipated closures under 16 V.S.A. 1071(c) in the 2020-2021 school year. Gleason seconded the motion. Secretary French explained the need for school calendar waivers which was usually related to weather. The COVID-19 emergency offered a new element. Last year, the State Board authorized him to issue waivers as needed on its behalf. There were a handful of waiver requests specifically related to the COVID-19 response. Olsen wondered if the authority should extend past the current school year and be tied to the state of emergency. Secretary French said that the motion would accomplish the needs for the spring. He added that waivers are not extended in the fall and he was hopeful that the state of emergency would not be in effect next spring. Discussion followed regarding attendance days, minimum of 175 attendance days, no direct connection to student outcomes, attendance days attached to teacher contracting days, recovery work, summer school and contractual arrangements with teachers. There was a question if the motion was seconded. Gleason seconded the motion. Roll call vote: Yea – Gleason, Lavoie, Mathis, Olsen, Peltz, Samuelson, O'Farrell, and Carroll.

Chair Carroll called a recess at 10:35 a.m. He reconvened at 10:44 a.m.

Item H: Rules Series 1300/2360 - SBE Rules 1300/2360 Committee

Gleason thanked the members of the committee as well as the stakeholders that participated. The focus of the committee was Adverse Effect, parental consent, and Multi-tiered Systems of Support (MTSS). The committee's goals were to align the language more closely to the federal language, look to improve practice and consistency and to try and bring them together with some consensus. The committee had consensus language that addressed all three areas. Gleason said the MTSS language was referenced in the previous draft and anything beyond that reference with respect to MTSS would be a separate rule with existing language. MTSS was not a special education construct. It was a general education construct and any language would not be included in the special education rules. Gleason said they have changed how Adverse Effect was approached in some areas and added more parental voice but did not change the requirement around parental consent.

Simmons reviewed the [Proposal of the SBE Subcommittee in 2360 and 1300](#). The proposed changes include: 1) Not requiring a requirement of Adverse Effect for two disability categories

(Deaf-Blindness and Specific Learning Disability); define Adverse Effect from being data driven to be more reliant on the opinions of the special education professionals; add a new basic skills area “functional skills”; remove using a discrepancy model and use a model based on other alternative research-based procedures for determining specific learning disability; MTSS relevant language existed and was filed with ICAR and was sufficient; include specific data that would be used to assess goals progress; and, add a new requirement that the Individual Education Program (IEP) contain a section where parents could provide written comment regarding the IEP and allow parents 10 days to provide it. The text of the parent comment would be included in the IEP.

Discussion followed regarding weak language around the parent comment becoming part of the IEP of record, changing “up to 10 days” to “10 days”, fixing the punctuation pertaining to a comprehensive list in the content of an IEP section and guidance for alternative research-based procedures. Chair Carroll said the work of the committee was a month ahead of schedule. He welcomed a motion that the State Board accept the proposed amendments as written and give provisional approval of them. The final approval will be voted on at a later meeting. Lavoie made the motion. Gleason seconded the motion. Simmons said the one amendment was to strike the words “up to” that precedes the “10 days”. Discussion followed regarding adding the definition of Basic Skills to page 1, making it clear that the IEP should be a comprehensive list, practitioners are comfortable at reading and interpreting the rule and updating the State Board members names on the main document. Roll call vote: Yea – Gleason, Lavoie, Mathis, Olsen, Peltz, Samuelson, O’Farrell, and Carroll. The motion passed. Chair Carroll said that the State Board will vote on final approval at the next meeting.

Item J: Rules Series 2220 - Census Based Funding Advisory Group

Meagan Roy, Chair of the Census-based Funding Advisory Group, said her report would be brief. She reviewed the [Proposed Census 173 Rules 2220 Minus the Rate-setting](#). She said that the changes include: creating a distinction between independent schools that are approved and independent schools that are approved and accept public dollars; enrollment requirement for approved independent school that accepts public tuition to accept students on an IEP; an independent school was not required to demonstrate that it had the resources to serve every category of special education in order to be approved to accept public dollars; lists the requirements that independent schools should demonstrate relative to its ability to serve all students with disabilities; added procedure for publicly funded students receiving special education services to enroll in an approved independent school; and, how an approved independent school will bill the Local Education Agency (LEA) excess costs for services provided. Chair Carroll said he was uncomfortable with an approved independent school not eligible to receive public funds. He asked Olsen’s group to come up with better nomenclature for this distinction. Discussion followed regarding recognized schools, using term “private” school and nomenclature enacted in Act 173. Chair Carroll asked if there was a motion that the State Board accept the proposed amendments as written and give provisional approval of them. Samuelson made the motion; Olsen seconded. Roll call vote: Yea – Gleason, Lavoie, Mathis, Olsen, Peltz, Samuelson, O’Farrell, and Carroll. The motion passed.

Item K: Rules Series 2200 - Rule 2220 Rate-setting Group

Simmons said the group met twice and the Vermont Independent School Association (VISA) would present their written mark-up of the proposed language. Once the stakeholder language was received, the committee would be close to supplying a final draft. The committee was hoping it would be a consensus draft. The committee was considering: how much documentation and what documentation the AOE should look at in terms of a therapeutic school's budget line items; and, on what basis the AOE should evaluate whether the line items were reasonable in relation to the services provided to publicly placed students. Chair Carroll said that at the April meeting the State Board would provisionally vote on the rate-setting language.

Moore spoke to the [Rate-setting Rulemaking Progress Letter](#) that he sent to the State Board. The draft rules were being circulated among the independent school group. He felt they were close to consensus and ready to meet later in February. Moore said that his group would begin scheduling meetings if the AOE did not pick up the pace to match what his group thinks was appropriate. There were three rate-setting requirements to be considered: consistency; transparency; and, accountability. Based on the experiences of several schools in recent years, especially those appealing rate decisions, each need increased emphasis. Schools should expect a consistent response from the AOE. The AOE should establish and apply standards and procedures and be transparent with the standards and procedures. The AOE should use reliable data, demonstrate standards and assurances that procedures were followed and show how the math worked and how the judgment was made. Moore was looking for an explicit audit trail on every application so that when a result was questioned there was no doubt about the data used, judgments reached and who was responsible for the result.

Item L: Rules Series 2220 – SBE Rules 2220 Committee

Olsen referred to the [Proposed Amendments to Rule 2200 by the Independent School Rules Update Committee](#) that was supplied to the State Board. He said the three committee members bring varied backgrounds to the committee. Key stakeholders have been invited to attend the meetings that include Vermont Independent Schools Association (VISA), Vermont School Boards Association (VSBA) and Vermont Superintendents Association (VSA). Phase 1 changes to the rules series were quick wins to be inserted into the rulemaking process dictated by the schedule laid out in Act 173. Phase 2 changes were issues that would take more time and would likely be a rulemaking process independent of Act 173.

Olsen said Phase 1 changes included tidying the complaint process and clarifying roles and responsibilities. They introduced a graduated complaint process that included an initial investigation to determine the nature of the issue and whether it could be resolved through informal means or if it was something more serious that required more attention and a formal investigation. They created a mid-step that authorizes the Secretary to place the school in a probationary status with a right of appeal to the State Board if the school feels the status was unwarranted or unfair. They established a register of complaints that would be a public record and would include all complaints that result in the imposition of probation or a formal investigation. The register would include the general nature of the complaint and action taken

by the Secretary. The final change required an independent school that had a boarding or residential program to either be licensed by Department of Children and Families (DCF) or be accredited by the New England Association of Schools and Colleges (NEASC). Olsen said that Phase 2 work would be addressed in future meetings and would include changes to the approval standards for schools that have not gone through NEASC accreditation with a special focus on board governance.

Discussion followed regarding retaining the requirement that reports or complaints must be made to the Secretary to trigger an initial investigation by the Secretary, wording should read 'compliance with the approval standards and laws, language was missing if the investigation cannot be solved in an informal way, enrolling day students, foreign exchange students and boarding students staying in host family homes.

Item M: Ethnic and Social Equity Standards Advisory Working Group

Chair Carroll asked Garces if her presentation could be cut in half with the other half presented at the March meeting. Garces agreed to supply a quick report on the work of the Act 1 Ethnic Studies and Social Equity Working Group. She said that the State Board had received the [Act 1 Report to the GA](#) as well as their [proposed changes to the Education Quality Standards](#).

Garces said the Act 1 Working group was considering licensure and fieldwork requirements for future educators, adoption of policies on racial justice, social equity and diversity hiring by school boards, formal evaluation of the Flexible Pathways Initiative of 2013 in relation to serving historically marginalized students and establishing a professional development collaborative with College of Ethnic Studies at San Francisco State University. The Act 1 Group was asking the Legislature for support financially to: 1) create a pilot program for 30 educators to work towards an ethnic studies certificate; 2) obtain national expert support for work on creating the standards; and, 3) adding 2 new student members and 1 indigenous member.

Garces said the Act 1 Working group was not ready to open the rules. She had just learned of the rulemaking process. They are working on additional recommendations around literacy and want to make sure that their report is complete. Garces said the Act 1 Working Group would create a timeline for their work that goes along with the State Board's timeline. The Act 1 Working Group would have additional recommendations in June.

Chair Carroll recessed for lunch at 12:16 p.m. The meeting resumed at 12:45 p.m.

Item N: Resolutions

Chair Carroll invited O'Farrell to read the [Resolution of Appreciation to William Mathis](#). Peltz made a motion to adopt the resolution; Gleason seconded. The motion passed unanimously.

Chair Carroll invited Lavoie to read the [Resolution of Appreciation to Peter Peltz](#). Olsen made a motion to adopt the resolution; O'Farrell seconded. The motion passed unanimously.

Mathis quoted Thomas Jefferson, "Those who expect to be both ignorant and free, expect what never was and never will be." He said equity was very important to him. He was worried about society and recent events which threatened democracy and integrity. Education was key. He urged the State Board to, above all matters, pay attention to equity, equality, and opportunity

for all children. Mathis appreciated that the State Board had been depoliticized. He urged the State Board to pay attention to what was happening in schools and classrooms. He said to try and do something important with your time on the State Board. That was his wish and prayer to his fellow State Board of Education members. He thanked the State Board of Education for their company and friendship.

Peltz quoted Dorothy Canfield Fisher, "There has been a lot of turnover in population and each time it happens it restrengthens who we are as Vermonters and how we act as citizens." Peltz became immediately engaged in town office after moving to the area. Vermont really does invite engagement and enriches us as citizens as well as the communities in which we live. Vermont has welcomed his family and has encouraged engagement. Peltz said he has been battling stage 4 cancer and that has not stymied his involvement. He wanted to join the State Board after his term in the legislature because of the value and worthiness of the State Board. He said the current State Board was terrific and was a statement to its commitment to education. He thanked the State Board members and wished them luck.

Item O: Executive Session – with Bridget Asay re § 828 appeals

Chair Carroll said it was time to transition to executive session. He noted that three State Board members were recused based on prior understanding: William Mathis; Kathy Lavoie; and Secretary French. He explained the process for executive session. Samuelson moved that the Board find that premature general public knowledge of confidential attorney-client communications made for the purpose of providing professional legal services to the body with respect to pending quasi-judicial proceedings would clearly place the Board at a substantial disadvantage; Olsen seconded. Roll call vote: Yea – Brochu, Gleason, Lavoie, Olsen, Peltz, Samuelson, O'Farrell, and Carroll. Mathis abstained. The motion passed. Samuelson made a second motion that the Board move to executive session for confidential attorney-client communications made for the purpose of providing professional legal services to the body with respect to pending quasi-judicial proceedings pursuant to 1 V.S.A. §313 (a)(1)(F) and to enter deliberative session to consider issues relating to pending quasi-judicial proceedings; O'Farrell seconded. No discussion. Roll call vote: Yea – Brochu, Gleason, Lavoie, Olsen, Peltz, Samuelson, O'Farrell, and Carroll. Mathis abstained. The motion passed.

The State Board entered executive session at 1:03 p.m.

The State Board returned from executive session at 1:47 p.m.

Samuelson made a motion that the Board grant the request of the appellants in the Buckley, Valente and Gallo appeals to have their counsel present oral argument to the Board with oral argument limited to 30 minutes combined for the presentation of the appellants' counsel and 30 minutes combined for the presentation of the respondent school districts' counsel; Olsen seconded. No discussion. Roll call vote: Yea – Carroll, O'Farrell, Samuelson, Peltz, Olsen Gleason and Brochu. Lavoie abstained. The motion passed.

Item P: SBE Agenda and Workplan

Chair Carroll said that most of the time at the upcoming March, April and May meetings would be devoted to rulemaking. He was aware of a pending Town Meeting Day vote of a unified

union school district wishing to withdraw from the status to which it was directed to merge in the Vermont State Plan. He said the March meeting would likely include an executive session pertaining to § 828 appeals. Gleason requested revisiting the State Board's Strategic Plan which was outdated and to work on bringing it back into compliance during the State Board's retreat.

Chair Carroll recessed for a break at 1:51 p.m. The meeting resumed at 2:02 p.m.

Item N: Implicit Bias Training

Chair Carroll explained that Garces would lead a discussion on Implicit Bias that would not be videotaped by *The Media Factory (RETN)* and the public portion of the meeting would be over.

Chair Carroll introduced Amanda Garces, Human Rights Commission, to lead the 2nd part of training on Implicit Bias.

Chair Carroll thanked both Garces and Davis for the training.

The meeting adjourned at 4:06 p.m.

Minutes prepared by Suzanne Sprague