

State Board of Education

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 311 931 226#

Date: March 17, 2021

Present:

State Board Members (Board): John Carroll, Chair; Jennifer Samuelson, Vice-Chair; Kim Gleason; Sabina Brochu; Jenna O'Farrell, Kathy Lavoie; Oliver Olsen; Angelita Peña; Tom Lovett; Lyle Jepson; and Dan French.

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

Others: Mill Moore, Vermont Independent Schools Association (VISA); Meagan Roy, Act 173 Advisory Group Chair; Susan Aranoff; Sean-Marie Oller; Life LeGeros.

Item A: Call to Order/Roll Call/and Introductions of New Members

Chair Carroll called the meeting to order at 9:31 a.m. and asked members to introduce themselves. He explained that this was an organizational meeting and that the agenda would be different than usual. He introduced the two new members: Lyle Jepson - current executive director of the Rutland Chamber for Economic Development, director of Stafford Career Center, Dean of Entrepreneurial Programs at Castleton State University, principal at Fair Haven High School and schoolteacher in Newport. Tom Lovett - headmaster at St. Johnsbury Academy for 20 years, and also taught English and Math and coached football in Rhode Island. Chair Carroll read the affirmation of allegiance: *Do you, Lyle and Tom, solemnly affirm that you will be true and faithful to the State of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof, under the pains and penalties of perjury?* Both affirmed this. Chair Carroll read the affirmation of office: *Do you, Lyle and Tom, solemnly affirm that you will faithfully execute the office of Member of the State Board of Education and will therein do equal right and justice to all persons, to the best of your judgment and ability, according to law, under the pains and penalties of perjury?* Both affirmed this.

Olsen spoke about deciding on an agreed upon procedure for handling the elections of officers since there was likely one vacant seat and a contested election for Chair. He said he spent time consulting statutes, Robert's Rules of Order (RRO), and the SBE's own rules in determining such a procedure. He said bi-annually, the SBE needs to appoint a Chair and there was nothing in the SBE rules for handling the election of the Chair or Vice Chair other than RRO so the SBE generally relied on these. There are a number of different methods to consider per RRO. It was unique that there was a contested election.

Pursuant to sections 31 and 46 of Robert's Rules of Order, Olsen moved to adopt the following procedures to govern the nomination and election of Chair and Vice-Chair of the Vermont State Board of Education for the 2021-2023 biennium:

- First, that the outgoing Chair from the 2019 - 2021 biennium act as the presiding officer for nominations and the election of the Vice-Chair, that nominations be accepted from the floor, and that the election of the Vice-Chair be conducted via rollcall vote;
- Second, that newly elected Vice-Chair act as the presiding officer for nominations and the election of the Chair, that nominations be accepted from the floor, and that the election of the Chair be conducted via rollcall vote;
- Third, that each nominee for the position of Chair and Vice-Chair be afforded an opportunity to speak before the board about their candidacy for up to 5 minutes; and
- Fourth, that for the elections of Chair and Vice-Chair, the roll be called in reverse alphabetical order, with the senior student member voting last.

The motion was seconded. Gleason encouraged that the motion be voted down and that a more private means of voting be honored. O'Farrell suggested amending the motion to point 4 of Olsen's motion to vote via ballot in a contested election. There was discussion on challenges related to this. O'Farrell offered an amendment to Olsen's motion: that for the elections of Chair and Vice Chair, the voting members be able to cast an anonymous vote via email. Gleason seconded.

There was discussion on emails being subject to public records requests, defeating this amendment and moving forward with the original motion, never being part of a contested election where voting was public, secret ballot would be the most respectful way to handle this and that it was not problematic that it was ultimately public information, privacy being important vs. being put on the spot, procedural concerns with a secret ballot, practical reality that the vote will not be kept secret, replacing the word secret with private, voting as a public board not private citizens, this process taking a long time, and freedom to vote independently.

Chair Carroll asked for a roll called vote. The amended motion failed with 5 opposed (Samuelson, Olsen, Lavoie, Jepson, Carroll) and 4 in favor (O'Farrell, Lovett, Gleason, Brochu).

Chair Carroll called a roll call vote on the original motion. This passed with 6 in favor (Samuelson, Olsen, Lovett, Lavoie, Jepson, Carroll) and 3 opposed (O'Farrell, Gleason, Brochu).

Item B: Election of Officers

Chair Carroll asked for nominations for the position of Vice Chair. Olsen nominated Samuelson. There were no other nominations. There was a roll call vote. Samuelson was elected Vice Chair. She received 8 votes (Olsen, O'Farrell, Lovett, Lavoie, Jepson, Gleason, Brochu, Carroll). Samuelson abstained.

Chair Carroll turned the gavel over to Vice Chair Samuelson for the election of the Chair. She thanked the SBE and asked for nominations for Chair. Lavoie nominated Carroll. She spoke to his passion, commitment, tried leadership and consistency, that he was known and respected in

the Legislature and that serves the SBE well, especially in relation to S.166 and that he would set the stage for another great two years with a lot of work to be accomplished.

O'Farrell nominated Gleason. She spoke about her experience and collaboration with her on the SBE and in the community. She spoke of Gleason's ability to unify the SBE and move them toward the strategic mission and planning and bridging the work that exists and having a firm understanding of what was needed to move forward. Nominations were closed and Vice Chair Samuelson stated that nominees were afforded up to 5 minutes each to speak and offered Gleason to go first.

Gleason spoke about a vision that provides transparency and collaboration, confidence in building capacity within legislative responsibilities, commitment to a strategic vision and responsibility of reporting on accountability and attending to equity and that she would be honored to lead that work. She spoke about being fortunate to be on a board of committed people with diverse backgrounds, complicated accountability structure makes it important to work collaboratively and collectively, can improve transparency and accountability, creating a welcoming and inclusive culture of all SBE members and stakeholders, building a structure so that work is intentional, has had a lot of opportunities to lead and testify in the legislature and have enjoyed being a liaison with Act 173 Advisory Group, treasured time with students and hearing the broader student voice, and is grateful and deeply committed to this work.

Vice Chair Samuelson offered Carroll 5 minutes. He spoke about his email to SBE members the day prior outlining the SBE's accomplishments – building consensus around the special education rules and expressed appreciation and pride for the work of the Act 173 Advisory Group, Gleason's working group, and AOE's General Counsel. He said that no SBE has been as transparent or as inclusive as this one, and that the SBE serves as a bridge between Montpelier and the people in the communities educating our children. He spoke about working hard to delineate responsibilities between the SBE and the AOE to free up time to focus on shaping the new direction of education. He concluded that it has been an honor and sometimes a lot of fun, other times a lot of hard work – and that he would be grateful to serve in the next biennium.

There was a roll call vote. Carroll was re-elected as Chair. He received 6 votes (Samuelson, Olsen, Lovett, Lavoie, Jepson, Carroll) and Gleason received 3 votes (O'Farrell, Gleason, Brochu).

Chair Carroll asked Samuelson to continue to chair the meeting as he was having technical difficulties and only able to participate via phone. Vice Chair Samuelson called a recess at 10:40 a.m. Vice Chair Samuelson called the meeting back to order at 10:48 a.m.

Item C: Amendments to the Agenda

Olsen noted that all committees and committee appointments from the last biennium have expired and he suggested an agenda item be added to re-appoint the prior committees. Olsen moved to amend the agenda to add an item immediately following this item, to address committee re-appointments; O'Farrell seconded. There was discussion on the rules series 1300/2360 committee. Vice Chair Samuelson called the vote. The vote passed unanimously. Olsen moved to re-appoint the SBE committees that existed in the prior biennium with the same

composition of members; Samuelson seconded. There was no discussion. Samuelson called the vote. The vote passed unanimously.

Item D: Consent Agenda

Consent Agenda:

Olsen moved to adopt the consent agenda; Gleason seconded. Vice Chair Samuelson called the vote. The vote passed unanimously.

Item E: Board Announcements, Student Reports

Board Announcements: None

Student Report:

Brochu spoke about the survey link on mental health and thanked those who had responded and forwarded the survey. She acknowledged the SBE's support for student voice. Peña spoke of some challenges she has had with the survey. Her school community council received \$10,000 and she was working with her school to decide what was needed and how to spend it and was learning a lot about budgeting and planning. O'Farrell shared that she attended a Sanders Youth Town Hall and there were 5 Vermont students who spoke about the same issues highlighted in the survey. She congratulated Peña and Brochu on their efforts on summarizing key focus points and capturing students' voices.

Item F: Public to be Heard

Vice Chair Samuelson asked for any members of the public participating in the call and/or wishing to be heard, to identify themselves.

Sean-Marie Oller, attended that last meeting and referenced a point of order at the last meeting where the Chair's report was warned as a discussion, but there was actually a prepared motion and a vote, and the agenda was not appropriately amended. She added that censoring the SBE or giving the SBE full authority to only speak in opposition of something was not democratic. Also, she thought that new appointees needed to be consented to by the Senate and historically the Secretary ran the Board through the elections. Olsen responded to the practice of the Secretary leading the organizational meeting and reiterated that there have been inconsistencies with this practice. He added that at the March 17, 2015 SBE meeting, where Oller was present and voting, the practice was that the Chair led the elections as presiding officer. Secretary French added that the new appointees are not required to be confirmed by the Senate prior to them taking office.

Life LeGeros, Duxbury, spoke about standardized testing this spring– he has a lot of experience on what ways these tests are good and not good. The state was requiring assessment and has no opt out provision for families. This was very important this year. He hopes the SBE can do something about this. He has not made any progress contacting the AOE and referenced a memo (December 15, 2020) from the AOE. The test will not be useful, results will be delayed and not comparable, not used for accountability, and probably not be recorded and preparation and administration of these tests is taking away precious learning time from students.

Item G: Chair's Report

Chair Carroll spoke about: 1) upcoming tuition appeals hearing and that two Board members are conflicted and will not be participating, and 2) at the request of the Legislature, he has been working on some bills – state aid for construction, the weighting study, and some other legislative initiatives. He added that at the April and/or May meeting, there will be a request for Ripton to withdraw, per §724, from the Addison Central School District.

Item H: Secretary's Report

Secretary French welcomed the new members and apologized for missing the vote and added that he was a non-voting member. He spoke about the AOE's COVID-19 response:

1) Regarding the Smarter Balanced Assessment Consortium (SBAC), he corrected the public member and noted that the federal government was requiring the assessment, not the states. He explained that there was a limited waiver (accountability provisions) under exploration, and that under Every Student Succeeds Act (ESSA) there was no opt-out allowance. The waiver process was consolidated and requires a public comment period.

2) Vaccination of school staff has started in an effort to get students back in the classroom full-time (this includes bus drivers, food service workers and contractors). There is a variety of sites (National Guard, pharmacy, Vermont Department of Health) to ensure broad reach. There is stability in the projections of vaccine supply, and we will see the age-band process moving forward quickly.

3) Under the American Rescue Plan Act (ARPA), Vermont will get significant additional funds for education – under the Elementary and Secondary School Emergency Relief Fund (ESSER) III, districts K-12 will receive about \$290 million and 90% needs to be allocated directly to school districts and the state can set aside 10%. There is a concerning trend that the legislature is allocating the set aside ESSER funds for a variety of different programs that are perhaps not relevant to COVID-19, per law, and not acknowledging the strategic nature of these funds that extend to 2023 because we don't necessarily fully understand the magnitude of the impact of COVID-19.

There were comments/questions on appreciation and relief for vaccinating teachers, summer educational options for learning loss, active planning on larger state-reopening from an epidemiological standpoint, cross-agency resources under consideration for summer programming, monies eyed by the legislature, allowable uses of funds (10% set aside), specific sub-limitations, tracking of individual ESSER funds, integrated service models, changing distancing requirement, and districts needing to start planning with existing guidance.

Olsen asked to clarify something he said earlier in response to former SBE member Oller's concern that the Secretary had not presided over the election. He asked that the record be corrected. He said he had indicated that Oller was present and voting at that March 2015 meeting, but he checked the minutes and was not sure if she voted or not, but she was the presiding officer.

Item J: SBE Rules 2220 Committee - *PROPOSED NON-173 RULES 2220*

Olsen said there were some minor suggestions that were considered since the last meeting. The intent of the draft is to attach these to the other rules going forward in rulemaking as part of Act 173. The mission was to strengthen the rules expeditiously and with consensus, and he felt that was accomplished with partnership from stakeholders.

There was discussion on the Council of Independent Schools (CIS) being invited but not having participated as a body, representation from the Vermont Independent Schools Association (VISA), timelines in process for various rules, hard deadline of June 30, final proposals for provisional adoption at April meeting and integration of three proposals into a single coherent revision for presentation at May meeting. There was additional discussion on an update from the Senate Education committee and a provision of Act 173 that creates a unique construct where in limited circumstances (concerns of financial capacity of an independent school), the SBE has the authority to initiate and conduct the investigation, which leaves the SBE in a conflicted position because the SBE also needs to adjudicate these matters. It was suggested that the SBE shift responsibility for conduct of investigations to the AOE and express this sentiment through the Chair to its relevant committees of jurisdiction so that the SBE can remain a neutral entity.

Olsen excused himself at 11:56 a.m.

Item K: SBE Rules 1300/2360 Committee to present *PROPOSED (FINAL) AMENDMENTS TO RULES 1300 AND 2360*

Gleason said there was nothing new since the last meeting. There have been some changes to the title page and form matters that might come up before the formal filing. She asked for questions prior to the motion of approving the final draft. Chair Carroll said the SBE had asked the committee to remove the language “up to” in regard to parents having “up to ten days” to respond and asked if that had happened. Gleason confirmed that the change was made. Other changes included the effective date. Gleason spoke about feedback on three areas and the creation of the subcommittee and work with stakeholders. There was discussion on if the draft reduced administrative burdens and increased flexibility of funds, transparency, use of funds, and work of Act 173 Advisory Group. Gleason moved that the SBE approve the final rules 1300/2360 and empower the Chair to work with the AOE staff to make any necessary changes to form which might include further potential typos, formatting issues, cover pages and logos before presenting the final document to the Legislative Committee on Administrative Rules (LCAR). Samuelson seconded. Chair Carroll offered gratitude to Roy and Mahusky and the Act 173 Advisory Group, AOE staff, parents, students, and the subcommittee on this heroic undertaking that has required many people working behind the scenes for almost two years. Vice Chair Samuelson called the vote. The vote passed with no opposition.

Item L: Census Based Funding Advisory Group to present *PROPOSED (FINAL) CONSENSUS 173 RULES 2220 (EXCEPT RATE SETTING)*

Meagan Roy, Chair of the Act 173 Advisory Group introduced herself and said she didn't have anything to add to the provisional approval that was given last month. She asked for questions.

There was discussion/questions on section 2231.1 being all independent schools or therapeutic independent schools, direct cost rates applying to all approved independent schools, appreciation for Roy's work on this, getting a well-integrated document to be approved in May, and the Act 173 Advisory Group having the integrated document prior to SBE's May meeting. Chair Carroll said it was his error and that no vote was required on this item.

Item M: Legislative Update

Chair Carroll shared the range of other pieces of legislation that would be of interest to the SBE: 1) Weighting Study, 2) Capital Budget for School Construction, 3) H.130, defining a religious school, 4) H.180 would provide for a dissolution or withdrawal for districts forcibly merged under Act 46, 5) H.181, pertaining to Proficiency Based Learning (PBL) and making PBL an option (vs. required), and 6) H.214, that would require the SBE to establish statewide criteria for student proficiency based education.

There was discussion on AOE's past capacity for school construction, supporting transitioning some administrative rules to the AOE, AOE proposing legislation that strips the SBE of all rulemaking authority, framework of S.166, why the AOE would introduce a bill that was in conflict with what the SBE agreed upon without advising of such, AOE's focus on policy coherence, AOE's 66-page proposal that was circulated to the legislature and that was fundamentally different from S.166, points of contention, AOE's logic for reforming the regulatory structure not being a result of negotiation, AOE attempting to schedule time to discuss policy coherence with the SBE but this remains unaddressed, incoherence in regulatory framework, accepting a less than ideal compromise was a disservice, having capital construction housed at the AOE, devoting 90 minutes at the next meeting to policy coherence, getting others' views to get a better understanding, public discussion on S.166, and having a straw poll vote to bring to the legislature on capital construction.

Secretary French spoke about never agreeing to S.166 and being dissatisfied with the process of negotiation and the need to work on the coherence issue. He questioned if AOE has capacity to create a finance system for school construction and support the SBE in its work relative to developing very technical rules. This was a multi-year project and the broader perspective of the work, what lies ahead, what scope of work was doable, all needs to be considered in respect to capacity. Federal COVID-19 funds present an opportunity to address schools' deferred maintenance issues, which have been neglected and led to school construction issues. The focus of the spending of federal funds should be on where progress can be made and where it was totally relative to COVID-19 relief.

Vice Chair Samuelson spoke about trust and good faith and maintaining a spirit of good will and cooperation, open lines of communication, and working together to be more effective.

Chair Carroll offered to speak with the House Committee about developing a finance formula for school construction and the SBE's uneasiness of taking on this piece. This may be moot, depending on if this bill was progressing or not. There was discussion on the SBE not wanting rulemaking authority on anything for which the SBE has no expertise, lack of complete information on what was needed for infrastructure improvements, moving forward effectively

and appreciation for this conversation. There was general agreement on having Chair Carroll convey to the House committee that the SBE was uneasy taking on this piece (finance formula for school construction), and that the SBE advocates that the legislature look at that work being under the jurisdiction of the AOE.

Item N: State Board of Education Agenda and Workplan

Chair Carroll said this item had been addressed. He recessed for a 30-minute lunch at 1:00 p.m.

Chair Carroll reconvened at 1:32 p.m. and Olsen rejoined the meeting at this time.

Item O: Rate-setting Group - *PROPOSED CONSENSUS 173 RATE-SETTING RULES 2220*

Emily Simmons, AOE General Counsel, introduced the topic by stating that this group has been working together and there was agreement that more detail would result in a better process. The crosswalk illustrates the areas of disagreement. She provided background information: rate setting doesn't apply to every approved independent school, only the smaller subset (32) of therapeutic schools. This was a small number but there was variability in size, approach and population served. The amount of tuition paid by the district was tied to statute (average tuition) and there was an excess cost model that covers costs associated with special education services. This statute treats therapeutic schools differently – there was not an average announced tuition and excess cost case by case on top of that. The AOE was charged with looking at the total cost of education and determining what was reasonably related to level of services provided to publicly funded students. This process drives a maximum rate and the two parties negotiate under this rate. Under the current rate setting construct, the negotiated rate was always the maximum. This process is very financially driven, and the hope is to have clear expectations for all parties.

Simmons walked the SBE through the [working draft of the Rate Setting Rule Working Group](#) and the [side-by-side document](#) that showed the independent schools' proposal, the AOE's response and the independent schools' comments. She outlined the four areas of disagreement and noted that the disagreement was in high-level concept. The deadline for a consensus draft was less than a month out and she said the four disagreements have been discussed and there has been enough time to fully hear each other; they are now working on creative solutions towards a compromise.

There was discussion on how the AOE deals with other contracted services that use public monies, having an analogous process, infrastructure costs for some schools to exist regardless of student count, separation of costs, ensuring financial flexibility, statewide vs. regional comparables, double-dipping concerns, imposing something in lieu of agreement, next steps without consensus, compromise of salary threshold, concerns with private donations offsetting payments, suggested approach of each side bringing best and final offer and the SBE deciding how to move forward.

Moore expressed concern about hearing Simmons explanation at length without hearing the independent school perspective. Chair Carroll invited him to speak. Moore talked about starting this process de novo, from one sentence in statute and working forward from there and believes what the independent school community wants was consistent with statute. Revenue

does not appear in statute, so this was off the table for the independent school community. SBE has a considerable concern about independent schools having a robust and active internal governance process – and any action the AOE takes in adjusting details of a school’s budget interferes in the responsibility that the school has to the AOE, SBE, students, and its board of trustees to govern itself internally. The independent schools are very cautious about having the AOE make financial adjustments of the independent schools – they have provided a list of 13 categories, drawn for use elsewhere in the state, and summary totals and that should suffice for the AOE. Moore offered to take questions.

Chair Carroll reiterated Simmons’ concern that a consensus agreement might not be ready for the next SBE meeting. He said it would be desirable if the parties could come to an agreement by then. He offered three suggestions: 1) give feedback today on the sticking points, 2) appoint a small working group to provide guidance on this matter, and 3) convene a special SBE meeting in two weeks. Olsen added a fourth – 4) that we have both sides present their best effort of a draft and let the SBE decide. Chair Carroll asked for input.

There was discussion on alternate options, having a fresh perspective, Moore’s and Simmons’ preference, how other states are navigating similar challenges, how public schools handle excess costs when serving high-needs students, being good consumers of public funds, fundamental structural differences of public and independent schools, AOE’s lack of expertise in managing independent schools, discounting of independent schools’ expertise, needing to move the process forward, fundamental disagreement on the meaning of statute 16 V.S.A. §2973, and support of a full SBE conversation on the topic outside the regular meeting time.

Lavoie left the meeting at 2:33 p.m.

There was additional conversation on a special meeting of the SBE, preferred language and rationales, independent school representative speaking to practice, provisionally scheduling special meeting and appointing one person to serve as mediator in hopes of moving towards consensus as quickly as possible. Chair Carroll acknowledged a member of the public who wished to be heard and said he would not be recognizing that member at this time because they were in mid-discussion with two key players of the dialog. Chair Carroll suggested that the SBE nominate a mediator and if that was unsuccessful, then the SBE would have a special meeting. Simmons and Moore committed to such a process. Lovett offered to serve as mediator. There was discussion on having an objective perspective, avoiding mediating by committee, and who would mediate. It was decided that Samuelson would mediate.

Chair Carroll said a special SBE meeting will be scheduled about three weeks out for two hours and that will be cancelled if consensus was reached. This was agreed to by Simmons and Moore.

Chair Carroll reminded hearing panel members that they would be receiving information for a virtual meeting/hearing per §724, on a tuition appeal.

Adjourn

Chair Carroll adjourned the meeting at 2:47 p.m.

Minutes prepared by Maureen Gaidys