

State Board of Education Rule Series 2200 Subcommittee

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 671 614 337#

Date: July 7, 2021

Present:

State Board Committee Members (SBE): Jennifer Samuelson, Kim Gleason, Tom Lovett

Others: Mill Moore, Vermont Independent Schools Association (VISA); Sue Ceglowski, Vermont School Boards Association; Susan Aranoff, Vermont Developmental Disabilities Council

Agency of Education (AOE): Emily Simmons, General Counsel; Suzanne Sprague

Additions to the Agenda

Chair Samuelson called the meeting to order at 12:02 p.m. She took a roll call and offered the member of the public the opportunity to identify themselves. Lovett made a motion to move the approval of the meeting minutes to the end of the agenda. Chair Samuelson seconded. The motion passed.

Public comment

None

Update on Act 173 and Related Revisions of SBE Rule Series 2200 (“Phase I Work”)

Chair Samuelson reviewed the documents that were supplied to subcommittee members in advance of the meeting. These included [Phase 1 and Phase 2 Work](#) and [Tentative Timeline](#). The purpose of the discussion was to determine how to move forward with the subcommittee’s work. Chair Samuelson reviewed the work of the subcommittee to date which was in response to Act 173 along with other minor changes. The full State Board of Education provisionally adopted the draft Rule Series 2200. The draft rules were filed with the Interagency Committee on Administrative Rules (ICAR). A hearing by ICAR will take place in July and then the Administrative Procedure Act (APA) rulemaking process will begin on Phase I changes. There are four public hearings on the draft rules. The scheduled dates and times are August 18th at 4:00 p.m.; September 25th at 4:00 p.m.; October 13th at 4:00 p.m.; and, October 19th at 7:00 p.m. Chair Samuelson said the subcommittee would supply updates on the hearings to the full State

Board at its regular meeting with suggestions on how to address public comment. Discussion followed regarding some Phase II updates potentially moved into the Phase I rulemaking and clarification and background on some of the potential changes.

Discussion of potential areas to update, revise and clarify in Rule Series 2200 (“Phase II Work”)

Chair Samuelson opened discussion on potential Phase II work. Discussion followed regarding some of the proposed changes already found in existing law and adding “comply with existing law” as a solution and then the change could be moved to Phase I rulemaking; adding a distinction between all state and federal laws that apply to independent schools versus public schools; adding language that would speak to an assurance; AOE to propose changes during public comment; language would become effective July 1, 2022; ministerial exemption applies to employment discrimination and not enrollment; public tuition in religious schools; Public Accommodations Act (PAA) 9 V.S.A. § 4502; enforcement of any PAA complaints are handled by the Human Rights Commission (HRC); hearing directly from the HRC; public funds going directly to religious schools; and, Senate Education Committee will discuss this topic.

Lengthy discussion on PAA continued regarding removing the topic from the subcommittee’s work since it will likely change; State Board of Education purview; non-discrimination laws as they apply to independent schools; unsettled area of law; independent schools supply assurance that they are complying with all applicable non-discrimination state and federal laws; enforcement mechanism; Phase 1 draft language 2223.8.2 (Complaints); appropriate oversight agency; open enrollment at independent schools is not required in rule or statute; how HRC would apply the PAA to independent schools that are publicly funded; differences between independent schools and public schools; Act 173 requires open enrollment for students on Individualized Education Programs (IEPs) in independent schools; IEP Team has authority to determine best fit for a student on an IEP; and, keeping the language broad. Chair Samuelson recapped the conversation and said that the subcommittee agreed that it could work on updating rules to require assurances on applications for approval of independent schools to include assertions that the school was checking with the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry as required by statute and then move it to Phase I. Simmons will provide suggested language at the next meeting of the subcommittee. Chair Samuelson will reach out to the HRC and ask for a presentation on applicable non-discrimination law and request assistance from the HRC in drafting language pertaining to updating rules to require assurances by all schools that accept public tuition dollars that they will comply with all state and federal laws.

Chair Samuelson thought that Phase I changes could include striking reference to Rule 7320 and abolishing Rule 7320 (outdated list of approved accrediting agencies). Simmons said the State Board would have to go through rulemaking to rescind the rule. Discussion followed on a companion action on recognized accrediting agencies by the State Board; opening rulemaking to rescind the list; amending Rule 2200 in Phase II and file with ICAR to strike Rule 7000 (Relationship with other Agencies and Public Institutions); Association of Independent Schools

in New England (AISNE) recognition by the State Board; not naming specific accrediting agencies; standards to evaluate accrediting agencies is Phase II; interim step of adding AISNE to list of approved accrediting agencies in Rule 7320 through rulemaking; boarding schools for elementary schools; and, New England Association of Schools and Colleges (NEASC) mini-accreditation process. Chair Samuelson asked Moore to research if there are K-6 schools with a boarding component that would be affected by the Phase I accreditation requirement. Chair Samuelson said if there was a school that would be negatively affected, opening the Rule 7320 to add AISNE to the list would make sense even if the list would be deleted in another rulemaking process and if that was not the case then it becomes Phase II work.

Chair Samuelson said that updating rules to require assurances from independent schools that are accredited by thirdparty accreditation agencies to certify that its curriculum meets the requirements of 16 V.S.A. § 906 was flagged in the State Auditors Reports from March 20, 2021. She asked if Simmons would draft language for this topic so that it could be added to the Phase I work and the AOE could propose it during a public hearing. Moore said that the topic could be affected by the Supreme Court case regarding religious schools. Simmons said she would draft language for the subcommittee's approval.

Simmons reminded the subcommittee that the Senate Education Committee would be meeting on topics of interest and that the subcommittee may want to draft testimony to present to the committee. She said the topics to be considered pertain to legislation prohibiting schools that receive public funding from discriminating based on race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental disability and, a request pertaining to child protection oversight of a place where children reside for educational purposes.

Chair Samuelson reminded the subcommittee that at its next meeting (date to be determined) Simmons would provide new draft language; Moore would have an update on K-6 residential boarding schools; Chair Samuelson would reach out to the HRC; and, discussion on topics being considered by the General Assembly would continue.

Creation of work plan for Phase I and Phase II

Not discussed.

Approval of minutes from May 10, 2021 meeting

Gleason made a motion to adopt the meeting minutes from the May 10th meeting. Chair Samuelson seconded. There was no discussion. The motion passed.

Adjourn

Gleason made a motion to adjourn. Lovett seconded. There was no discussion. The motion passed.

The meeting was adjourned at 1:59 p.m.

Minutes prepared by Suzanne Sprague, Agency of Education.