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State Board of Education

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 245 256 448#

Date: December 16, 2020

Present:

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

Agency of Education (AOE): Emily Simmons, Ted Fisher, Suzanne Sprague

Others: Susan Aranoff, Policy Analyst for the Vermont Developmental Disabilities Council; Crista Yagjian, Vermont Developmental Disabilities Council and Special Education Advisory Council.

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

Chair Carroll called the meeting to order at 9:07 a.m. and asked the members to introduce themselves.

Chair Carroll made one amendment to the agenda. He asked about the administration of comprehensive examinations such as National Assessment of Educational Progress (NAEP) and Smarter Balanced Assessment and the schedule for when they might take place be added to the agenda. He asked Secretary French to provide an update during his Secretary's report so that there may be discussion.

Item B: Consent Agenda/Board Announcements/Student Report

Consent Agenda:

Chair Carroll asked for a motion to approve the consent agenda items which included the minutes from the November 18, 2020 meeting. Samuelson moved to approve the consent agenda; Olsen seconded. There was no discussion. The motion passed unanimously.

Item C: Board Announcements, Student Reports

Board Announcements:

None

Student Report:

Peña said that her district experienced its first COVID-19 case at Starksboro Middle School which had to shut down but that classes have since resumed. She said that there has been

debate at her high school regarding the guidelines and mask breaks for students. There was confusion and students have been allowed to remove their masks inside the school building. The message that masks were not allowed to be removed inside the school has been relayed. Conversations have begun about how to give students a break from wearing masks.

Peña said that there have been complaints from parents regarding the Black Lives Matter flag. She said some students are not coming to school until the flag is removed.

Brochu thanked Secretary French for giving both she and Peña the opportunity to present at the Governor's press conference. She received positive feedback. She would like to do another student survey on mental health. She has reached out to members of the psychology department at St. Michael's College in the hopes of creating a survey that properly captures how students are feeling. She said there is a lot of stigma around mental health and some kids may not be getting the support they need.

Discussion followed regarding student engagement, teachers being supportive and aware, some students failing classes and some schools struggling. Chair Carroll asked Gleason to reach out to the Jay Nichols, Executive Director of the Vermont Principals' Association and Jeff Francis, Executive Director of the Vermont Superintendents Association, to assist if needed. Gleason agreed to supply support in the endeavor.

Item D: Public to be Heard

None

Item E: Chair's Report

Chair Carroll said that there have been a lot of parental concerns about students not being in school or not in school full-time.

Chair Carroll said there is a possibility of an appeal of a local school board and its decision to deny tuition payment to a religiously affiliated school.

Chair Carroll said that the Office of the State Auditor has taken an analysis of the laws and regulations as they apply to public schools and independent schools. A report is forthcoming. It was of interest to the Board since it writes the rules for both public and independent schools.

Chair Carroll said the Legislature will reconvene in January 2021.

Item F: Secretary's Report

Secretary French acknowledged Peña and Brochu and their performance at the Governor's press conference. He said their message was shared effectively. The AOE has been deploying school surveillance testing to all public schools and a handful of independent schools to be used as proxy for understanding virus spread in the communities. There was 40% participation during the first phase of testing. The results yielded a low positivity rate. He added that 25% of schools will be tested each week in December until school breaks for vacation and testing will resume in the new year. The Governor issued an addendum prohibiting multi-household social gatherings in advance of the Thanksgiving holiday and the AOE had issued guidance to schools on how to support that order. There was concern around the winter holiday. Secretary French

said that discussions have begun regarding the COVID-19 vaccination deployment. He added that after the holiday the focus will shift to returning to more in-person instruction which is the best intervention to students and their families.

Secretary French said that the Tax Commissioner was required to forecast education spending and potential property tax increases by December 1st each year. The Tax Commissioner has done so and indicated a 9% increase in property tax. Excluded from the analysis was a deficit in the Education Fund of approximately forty (40) – sixty (60) million dollars. He said there were three factors causing the potential increase: 1) an increase in education spending; 2) costs around teacher retirement; and, 3) drop in revenue.

Secretary French said that regarding the Smarter Balanced Assessment, at the national level among the Council of Chief State School Officers (CCSSO) there are two themes: 1) data is valuable in identifying equity issues; and, 2) the practical implication of administering the test in-person. He added that Vermont's actions are bound by what the federal government will require. There has not been any change from the U.S. Department of Education. The AOE is moving forward with planning to do the tests and working on the logistics. Districts have been notified to not interpret that planning as confirmation that the tests will be administered, and it was hard to predict what the conditions will be in the spring when the assessments are usually given.

Discussion followed regarding pressure on parents to coordinate education at home, monthly data collection, student engagement in schooling, returning to in-person instruction to assess impact on students and families, COVID-19 relief, preparing students for the assessments and stress associated with it, teaching using the hybrid model, the entire education system is behind, support supplied by the AOE, AOE's responsibility to conceptualize recovery phase, disaggregation of data to show how equity has been affected, National Assessment of Educational Progress (NAEP) being postponed and the weighting study and redistribution of existing resources.

Item G: Recommendation for State Board's FY22 Budget

Chair Carroll reviewed the definition of fiscal year and shared a [proposed budget](#) to be considered by the Board. He reminded the Board members that, at the Governor's request, current budgets were reduced by 3%. The State Board's the current budget was reduced by 9% because travel was eliminated due to its meetings being held virtually. Chair Carroll thought that meetings may resume to in-person in winter 2021. He said that the proposed FY22 budget is \$82,000. If approved, the Secretary of Education will incorporate the State Board's budget into the AOE budget and will then submit for approval by the Governor. The Secretary of Education will present its budget to the legislature in mid-January. The presentation will include the State Board of Education budget as well.

Discussion followed regarding adding a line item for staffing for the State Board, attorney fees, savings from National Association of State Boards of Education (NASBE) dues, possible school construction staffing and engineering professionals needs, financial health of the state and request for staffing being ill-timed, addressing conflict of interest and a dedicated AOE legal staff member for the State Board.

Samuelson made a motion to recommend the FY22 State Board of Education budget of \$82,000 to the AOE for incorporation into its budget. Olsen seconded. No discussion. Motion passed unanimously.

Chair Carroll called for a recess at 10:35 a.m. The meeting resumed at 10:41 a.m.

Item H: Rules Series 2220

Chair Carroll introduced the agenda item. He said that Rules Series 2200 contains many rules pertaining to prison education, private kindergartens, post-secondary institutions and independent schools. Rules Series 2220 pertains solely to independent schools and that was the Board's focus. Act 173 mandates that there be specific changes to the rules pertaining to independent schools specifically related to special education. Chair Carroll said that once the rules are open, there may be other sections in the rules, other than independent schools, that may require an update as well. He said there will be a committee that will review changes other than those related to Act 173. He was seeking authorization from the Board to make the appointments to the committee.

Gleason made a motion to direct the Chair to create a three-member committee to examine the need for additional changes to Rules Series 2200 not related to independent schools and to propose them to the Board for approval. Samuelson seconded. Discussion followed regarding updating the rules to reflect the current times since many are outdated. The motion passed unanimously.

Chair Carroll said that Act 173 changed the due date for initiating changes to Rules Series 2200 to June 30th, 2021. The Board must adopt a proposed draft and begin the Administrative Procedure Act (APA) process by June 30th, 2021. He reviewed the APA process. He said the Act 173 Advisory Group (AG) and the AOE are working on draft language for the Board to consider. He was hopeful that will take place in May. The committee will need to provide its proposed changes to the Board at the same time for the Board's consideration and approval. Should the scope of the work be too expansive, the rules can be opened again later. The committee members appointed were Kim Gleason, Jennifer Samuelson and Oliver Olsen, who will serve as chair. Chair Carroll suggested that the committee identify and prioritize the changes most urgently in need of updating and not mandated by Act 173. He would like the information ready for the January meeting.

Discussion followed regarding whether the draft offered by the AOE and AG will include technical corrections, informal and formal comment period, committee taking a two-phase approach; phase one with quick updates and phase two with more complex updates.

Item I: Rules Series 1300 - 2360

Gleason, chair of the Rules Series 1300 and 2360 committee, provided a report of the committee's work. She said the committee met twice and identified three recurring themes: 1) adverse effect, 2) parental consent, and, 3) Multi-tiered System of Support (MTSS). The first meeting yielded a lot of public comment which generated questions from the committee and required further feedback and response. The questions were submitted to Jacqui Kelleher, AOE State Director of Special Education, Marylyn Mahusky, Vermont Legal Aid, Megan Roy, Chair

Act 173 Advisory Group and Vermont Council on Special Educators Administrators. At the second meeting, public feedback was heard mainly from parents that experienced challenges with the way the system was working; adverse effect and inconsistencies with application; and, concerns on how rules align with federal law. Many parents were looking for a parental consent form to officially have their voices heard as parents. Vermont's rules allow for parental consent once and does not ask for it again. There is genuine concern from the Local Education Agency (LEA) that additional parental consent will hold up the process. A potential compromise regarding using a parental form was heard. The committee is wrestling with recommending it as a rule or practice.

Gleason said there was strong opinion that MTSS as its own rule should not be used to delay identification of special education for special education services. She added the MTSS was a function of general education. A separate MTSS section under special education does not make sense but having its own rules makes sense to stakeholders. She added the committee was awaiting further public comment which can be submitted through the end of December.

Chair Carroll said that the committee has refrained from providing firm conclusions since the public comment period was still open. The committee will have some recommendations for the Board's consideration at the January meeting. He is hopeful that the Board will vote on the recommendations at the January meeting. Chair Carroll said the public comments received from both parents and stakeholders was high quality. He suggested the committee embrace what was not working and listen to the perspective of parents. He said to error on the side of the parents. He asked the Board to read all public comment to prepare for the January meeting. He reiterated a comment and said that rules have far more power than recommendations of practice and procedure. Chair Carroll said that the special education system as it exists currently was not working well and that there was a wide variation on how schools are performing and implementing the rules.

Discussion followed regarding bringing rules up to date with federal regulation, change being mandatory, individual education programs (IEP), advocates making a difference in the process, codifying best practices for parent participation with IEPs the way other states do, issues surrounding special education and challenging special educators to do better.

Item J: Draft of annual report to the Legislature

Chair Carroll said he sent a [draft of the annual report](#) to the Board members. He said he would like to send it to the General Assembly on January 5, 2021. Discussion occurred regarding the draft pertaining to the purpose of Act 46 and consolidation of governance, changing the word purpose to goal, considering a suggestion to empower the Board to conduct a process of realignment consistent with Act 46, Board's authority of supervisory union boundaries and mentioning the work of the student members. Chair Carroll asked Olsen to suggest a one-line phrase to add to the report regarding empowering the Board.

Chair Carroll asked for approval of the draft at the meeting. He said it would be conditional and trusting the Chair to make the following changes: 1) work in reference to the student members; 2) add another sentence drafted by Olsen pertaining to disaggregation and Act 46; and, 3) change "purpose" to "goals". Chair Carroll asked O'Farrell for draft language regarding

the student members. Olsen made a motion to approve the annual report as proposed to be modified. Gleason seconded. Discussion followed regarding adding the sentence on the student members in the narrative. The motion passed. Chair Carroll said he will supply the revised draft to the Board members.

Item K: Draft of proposed legislative initiatives

Chair Carroll invited suggestions for the State Board of Education's Legislative Agenda. He will then produce a draft for a vote at the January meeting. Olsen suggested disaggregation of school districts. His proposal for the General Assembly was that any unified school district seeking to dissolve would go through the same steps as it did through the Act 46 process to act as a mechanism to reconfigure. The Board would handle the new school district proposals in a manner consistent with the goals of Act 46. He added that this will uphold the goals of the law and provide fairness to the districts that went through the process voluntarily or were asked to merge as a result of the Board's order. Chair Carroll asked Olsen to draft the language to include the issue and a possible remedy. Peltz volunteered to assist Olsen. Olsen added that the remedy does require a legislative adjustment.

Chair Carroll asked if the Weighting Study should be pushed with the General Assembly. Mathis agreed and thought that it may not be affordable given the circumstances but that a recommendation that the Legislature take up the issue was needed. Discussion followed that it be considered in terms of enhancing delivery and outcomes to students, capturing the expense of students that attend independent schools, Free and Reduced Lunch (FRL) not being a valid proxy of poverty because of how education is delivered in some parts of the state, equity for all students in any school, reducing the income and opportunity gaps and Act 60. Chair Carroll asked Mathis, Gleason and O'Farrell to draft the language for the Legislative Agenda, so it is clear and actionable.

Chair Carroll reviewed the previous work undertaken to reform the State Board of Education and to clarify the boundaries between the Board and the AOE. The pandemic stopped the process. He will resume the work in the upcoming session. The Chair of the House Education Committee offered to draft the legislation. Chair Carroll would like to add legislation that completes the reform of the State Board of Education to the Legislative Agenda. Discussion followed regarding the Sunset Advisory Committee and prior hostility towards the Board, Secretary of Education's position as whether the State Board of Education should continue, role of the State Board and law informing regulation. Secretary French said his "Blueprint" document was a recommendation on how to design our future. The intent of the paper was to provoke a conversation on what the design principle should be. He said that his thoughts were not meant to be the design principles but rather Vermonters should engage in a conversation about the intentional design of its education system.

Discussion followed regarding blue sky thinking, Secretary's recommendation to not eliminate the Board, propose rules changes only at the explicit direction by statute, reassign rulemaking authority between the AOE and the Board, defining roles and responsibilities, Secretary of Education as a member of the State Board of Education since he reports to the Governor, reliance on the AOE and its staff, value of the Secretary of Education and his perspective, other

state's structure, vision and coherence, entity to think more broadly, Act 98, multiple visions, resources and the importance of an independent board.

Chair Carroll called for a lunch break at 1:05 p.m. The meeting resumed at 1:48 p.m.

Item L: SBE Workplan/Agenda Setting

Chair Carroll asked the Board if it was interested in an update on what was happening in schools and inviting stakeholders in for a briefing. Peltz said that the McClure Foundation gave all graduates of the class of 2020, a free class at Vermont Community College. He spoke with a contact at the McClure Foundation, it was learned that most of the students that took advantage of the program were from Orleans County. He was hoping that she might brief the Board on the initiative and see if there were any suggestions. Chair Carroll asked if the Board would like to convene a listening session with principals, superintendents, teachers and students. He said the session would be 2 hours at the January meeting. He added that a two-hour implicit bias training will take place at the January meeting with another at the February meeting. He anticipated hearing from the committee working on the Rules Series 1300 and 2360 as well as the committee working on the Rules Series 2220.

Discussion followed regarding what would happen with the anecdotal information from the listening session, hearing from the McClure Foundation, inviting the equity officer for Orleans County to speak, asking the stakeholders for an update, what can be learned from the experiences from the prior months, hearing the administrative challenges and perspectives and receiving an update in the spring.

Item M: Public Hearing on Rules Series 1300 and 2360

Chair Carroll said that each speaker would have 6 minutes to present to the Board.

Susan Aranoff, Policy Analyst for the Vermont Developmental Disabilities Council, addressed the Board. She explained that the Vermont Developmental Disabilities Council was created under a federal law called the Federal Developmental Disabilities Act. The Council exists primarily to give people with disabilities and their family members access to the systems of government that impact their lives. They empower people with disabilities and their family members to access the systems and speak for themselves. She encouraged the Board to listen to the parent voice. She said the lived experience is important. Aranoff thanked the Board for holding open the public hearing process until the end of December. Aranoff said that the areas the Council were most concerned about were adverse effect and parental consent. The way the state has been doing things was not working for a lot of people. The parents of students with disabilities need a process that they can participate in, understand and be able to say yes or no. Parental engagement is key. She asked the Board to please take public comment on parental consent and adverse effect seriously.

Crista Yagjian is a licensed special educator, a parent of a student with disabilities, member of the Vermont Developmental Disabilities Council and a new member of the Special Education Advisory Council. She was addressing the Board as a parent and sharing her lived experience and perspective. She said that the process was an incredible opportunity to improve our educational support systems for all children including those with disabilities. She spoke about

special education eligibility and the three gates. She said the federal guidelines include adverse effect as part of the first gate which states the disability must adversely affects a child's educational performance. In Vermont, the evaluation teams need to show that a student is performing significantly below grade norms or at the 15th percentile or below. She worked in neighboring districts and the narrow process for determining adverse effect was applied differently, specifically around interpretation and practice. She said the variability impacts equity. Creating guidance aimed at helping caused confusion and inequitable determination about whether students with disabilities get the instruction to which they are entitled.

Yagjian said that MTSS intersects with adverse effect and often a student is not diagnosed with a disability because it is concluded that the students' needs are addressed through MTSS. If a student moves to the neighboring district, the student often needs to fail before the process of support begins. Yagjian said her experience with IEP meetings are never easy. She often receives a draft copy and realizes later that it includes parts that she did not agree to. She added that the process for disagreeing and documenting her concerns was overwhelming.

Yagjian asked the Board to consider changing the rigid criteria for adverse effect established by Vermont and to include social-emotional skills as part of the section and to consider allowing parents to give consent or partial consent to IEPs.

Olsen made a motion to adjourn. Gleason seconded. The meeting adjourned at 3:06 p.m.

Minutes prepared by Suzanne Sprague