

Act 173 Update:

Recommendations for SBE Draft Rules

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State Board of Education Meeting
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Agenda

- Overview of Act 173 & Charge of the Census-Based Funding Advisory Group
- Review of Advisory Group's input to Rulemaking Process
- Preliminary Recommendations of the Census-Based Funding Advisory Group

Overview of Act 173

and

Charge of the Census-Based Funding
Advisory Group

Act 173:

Priorities

- “...enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s school districts”
- “To support the delivery of these services, the State funding model for special education[...]will provide more flexibility in how the funding can be used, is aligned with the State’s policy priorities of servicing students who require additional support[...]and will simplify administration”

Act 173 Overview

Funding Model

- Replaces the current reimbursement model with a census-based (per student) grant
- Intends for funds to be used flexibly to support a school's multi-tiered system of supports for struggling learners
- Maintains alignment with Federal reporting requirements to ensure LEA Maintenance of Effort (MOE)

Programmatic Changes

- Schools required to develop multi-tiered systems of support (MTSS) for students who are struggling
- Emphasis on the District Management Group recommendations:
 - Classroom instruction must meet most needs of most kids
 - Emphasis on literacy
 - Strong social/emotional learning supports
 - High quality teachers provide intervention *in addition to* strong classroom instruction

Advisory Group

Act 173 creates a census-based funding advisory group with three duties:

1. Advise the State Board of Education on the development of rules necessary to implement the Act
2. Advise the AOE and supervisory unions on the implementation of the Act; and
3. Recommend to the General Assembly any statutory changes necessary or advisable to meet the goals of the Act.

Rulemaking Process:

Advisory Group Input

Overall AG Work to Date:

September 2018 - October 2019

- Eleven Advisory Group meetings
- Focused primarily on providing input to the Agency of Education in two areas:
 - Development of draft Rules
 - Professional learning framework to support district implementation
- Report to the General Assembly, January 15th 2019
 - [Link](#)

Timeline for AG Input

- **October & December, 2018:** *Subcommittee on Rules*
 - Subcommittee asked to provide input to the Agency regarding which elements of the special education rules require revision in order to implement Act 173
 - Agency presented a “Proposed Rules Structure” for input
- **January, 2019:**
 - Focus on special education funding for independent schools
- **February, 2019:**
 - Agency presented initial draft outline of Rules
- **March, 2019:**
 - Agency provided first substantive draft Rules and requested individual written feedback
- **April, 2019:**
 - Agency heard full Advisory Group feedback on draft
 - Advisory group began discussion of a recommendation for delay
- **May, 2019:**
 - Agency indicated they were not taking further Rule input; directed further input to State Board
- **July, 2019:**
 - Federal Education Group Presentation
 - SBE asked for an AG response to the Agency draft, including recommended language changes
- **September & October, 2019:**
 - AG discussion of DLP alternative draft rules and FEG additional input

Preliminary Recommendations

Definition of Special Education

Agency's Proposal:

Maintains existing definition of special education that restricts special education services (and therefore allowable expenditures) to those services that are not provided within a school's typical system of supports

Advisory Group Concerns:

- Proposed definition is unnecessarily restrictive and conflicts with the Federal definition of special education
- Inclusion of the phrase “...*that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system*” imposes limits on the ability of an IEP team to select accommodations, strategies and specialized instruction that are allowable under the Federal definition, and may restrict the ability of a school to provide services in the Least Restrictive Environment

Advisory Group Recommendation:

Adopt the Federal definition of special education services, consistent with 34 C.F.R. 300.39

Maintenance of Effort (MOE)

Agency's Proposal:

Applies current VT definition of allowable costs (and reimbursable special education services) to documentation of MOE under the census-based funding model, therefore eliminating the flexibility intended under Act 173

Advisory Group Concerns:

- Inappropriate connection is being made regarding the construct of what is reportable to demonstrate MOE, the allowable use of state & local funds, and what is allowable for IDEA-B funds
- Overapplication of what is allowable for IDEA-B funds to use of state & local special education funds, which effectively eliminates the flexibility stated under Act 173

Advisory Group Recommendation:

As part of the rulemaking process, seek external legal opinion regarding how to account for MOE, state & local spending and IDEA-B funds in a way that maintains alignment with Federal definitions of special education and provides flexibility intended under Act 173

Allowable Expenditures

Agency's Proposal:

Maintains existing, restrictive definition of special education when determining allowable expenditures, including the extent to which approved, independent special education schools can be considered allowable

Advisory Group Concerns:

- Does not take into account the highly specialized nature of approved independent special education schools' delivery of general education
- Impacts an IEP team's ability to determine the most appropriate placement and location for providing FAPE
- Will result in significant impact to LEA general fund budgets for costs determined to be disallowed

Advisory Recommendation:

Eliminate the proposed "test" for allowable expenditures, adopt flexibility permitted in federal rules, and ensure specifically that placement by an IEP team in an approved independent special education school is maintained as an allowable cost

SBE Legal Consultation

Advisory Group Concerns:

- Current proposed rules and cost documentation guidance indicate a conflation of 3 separate constructs (allowable costs under IDEA, MOE-eligible costs and permissive use of state & local funds)

Advisory Group Recommendation:

State Board of Education seek outside consultation in the development of Rules that will align with Federal requirements, appropriately separate the constructs noted above, and provide the flexibility that Act 173 intends and that we believe OSEP supports