

February 19, 2014

To: **Legislative Committee on Administrative Rules, Members**
From: **Stephan Morse, Chair, Vermont State Board of Education**
Re: **LCAR Action on Thursday, February 13, 2014 on State Board Rule Education Quality Standards (Reference #: 13-P35)**

Dear members of the Legislative Committee on Administrative Rules,

Thank you for hearing the Agency of Education's presentation on State Board of Education Rule 2000, Education Quality Standards. The following information responds to the requests made for revision to the rules at the February 13, 2014 hearing:

1. The State Board conducted the review of these rules through a thorough public engagement process, including a statewide education commission's comprehensive one-year review of the rules prior to the initiation of the rulemaking process. Following the initiation of the rulemaking process, the Board held monthly discussions on the rules in their public meetings; received, reviewed and considered significant public comment; held statewide public hearings; and took testimony at their monthly board meetings throughout the public comment period. This is documented in the materials submitted to LCAR.
2. Following the public comment period, an Agency attorney and staff, in consultation with an attorney from the Vermont School Boards Association, conducted a thorough legal review to ensure the rules met the legislative intent and did not overstep the legislative intent with regards to promulgating rules on school quality standards. The State Board of Education approved the rules unanimously at a December 17, 2013 meeting.
3. At the LCAR hearing February 13, a witness asserted that the proposed rule contained a reduction in physical education from four years to one-and-a-half. In actuality, a review of the annotated rules clearly shows that was existing language in the rule. In addition, the proposed rules still require annual learning requirements in several content areas, including physical education and health education as defined in 16 VSA §131.
4. A witness on February 13 referred to language that was included in a previous draft, submitted by her coalition, which was removed. That earlier draft document was part of the Board's review of the public comments, and it was found by the Board and legal staff review that those insertions were beyond the authority given to the Board. In fact, the Board did incorporate the language proposed by the coalition, to the extent it had legal jurisdiction to do so.



5. The Incorporation by Reference Statement submitted to LCAR references an entire body of content standards that outline grade expectations for all subject areas in all grade levels. These pre-existing and current standards are referred to as the Vermont Framework of Standards. That Framework, which is the proper place for greater specificity, contains physical education requirements for each grade and personal economics for each grade. From the Incorporation by Reference Statement included in the Board's submission: *"In the existing rules, the materials are specifically referred to as Vermont's Framework of Standards and Learning Opportunities of Spring 1996. The State Board has now adopted different standards for some core content areas... For the remaining topic areas of arts, family and consumer sciences, health, history and social science, information technology, world language and physical education, the Framework standards remain in effect. Therefore, the proposed rules frequently refer to 'the standards currently approved by the State Board of Education.'"* Links to those documents may be found in the Incorporation by Reference Statement, or at the Agency of Education website [here](#).
6. Regarding one witness's request for personal finance to be included in the rules, that proposal was not brought to the Board for consideration until after the rulemaking process was complete and the Board had already voted on the final rules. Again, that topic is already addressed in existing content standards and grade expectations.
7. The concerns raised by two witnesses at the LCAR hearing regarding physical education asserted that the Board was proposing "arbitrary" standards. "Arbitrary" has been defined by both the U.S. and Vermont Supreme Courts as "[f]ixed or arrived at by will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance." *Lewandoski v. Vt. State Colleges*, 142 Vt. 446, 453-454 (1983). In crafting the proposed Education Quality Standards, the Board engaged in careful policy balancing with regard to types and characteristics of requirements, the level of specificity to be enunciated by the Standards, and questions of which details should be in these rules. As recognized by statute at 16 V.S.A. § 164, the Board is recognized as Vermont's foremost authority on balancing those very sorts of complex considerations. Within the extensive public comments received and included in the rule adoption documentation are statements, testimony and conversations with these witnesses explaining what was and was not appropriate for inclusion in these rules. This extensive and considered "weighing of competing goods" embodied by the proposed rules is the opposite of arbitrary.
8. The Committee and Legislative Council appropriately and correctly recognized during the hearing on February 13 that the Committee has only narrow, non-policy grounds on which to object to a rule, which are: if a proposed rule is beyond the authority of the agency; contrary to the intent of the legislature, arbitrary; or if the agency did not adhere to the strategy for maximizing public input. 3 V.S.A. § 842 (b).
9. A rule is only outside an agency's authority if it attempts to give the agency new authority beyond that found in statute. Statutes give the Board broad authority to "[m]ake regulations under and in accordance with 3 V.S.A. chapter 25 as necessary or appropriate for the execution of its powers and duties and of the powers and duties of all persons under its supervision and control" as part of the Board's very broad



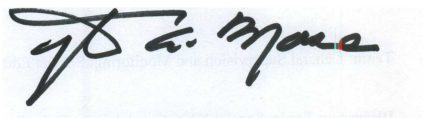
discretionary roles to “evaluate education policy proposals, including timely evaluation of policies presented by the Governor and Secretary; engage local school board members and the broader education community; and establish and advance education policy for the State of Vermont.” 16 V.S.A. § 164. The Education Quality Standards as proposed are fully within that statutory authority.

10. A rule is only contrary to the intent of the Legislature if it contradicts a particular existing provision of law. Nothing in the Educational Quality Standards contradicts standing law, nor have the commenters at the February 13 hearing identified any specific provision of existing law that they could claim is contradicted.
11. The State Board of Education’s filings demonstrate that the Board sought and received extensive public input, and that the State Board correctly followed a fair, open, methodical and prescribed process.

The State Board therefore respectfully submits that none of the points raised by commenters at the February 13 hearing represent a basis for the Committee to object to the proposal.

In response to the suggestion from the Committee to meet with the witnesses and return with compromise language: additional “sideline” conversations with certain specific interests outside of and after the public hearing process (without re-opening the process to all; which would be uncalled for) would be neither fair nor appropriate at this late point in the administrative rulemaking process.

Respectfully Submitted,



Stephan Morse, Chair, Vermont State Board of Education

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