

**TO:** Krista Huling, Chair, State Board of Education

**FROM:** Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)

**RE:** Act 173

**DATE:** May 15, 2019

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The Census-Based Funding Advisory Group is charged in Act 173 to advise the implementation of the law. Specifically, the Group has a responsibility to:

1. Advise the State Board of Education on the development of rules to implement the act; (adopted in 2020, in effect 2021)
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.

Over the course of the seven meetings of the Advisory Group, the Group has engaged primarily with Agency of Education staff with a focus on two main areas: Informing the development of draft Special Education Rules and providing input to the Agency regarding their proposed professional development plan to support districts in implementing Act 173. The Group has provided significant input to the Agency regarding those two key areas and has had the opportunity to view subsequent iterations of the proposed rules and plans.

In addition, the Advisory Group has provided input to the General Assembly via a required written report in January as well as testimony in both the House and Senate Education Committees. The Group has also advised the State Board of Education at the February meeting. In both cases, the Group outlined their work and identified key areas of concern regarding implementation, ultimately recommending to the General Assembly that the implementation timeline be delayed by one year in order to allow for full analysis of the issues raised and to provide additional time for districts to undergo professional development and systems change. All members present at the April meeting voted in favor of this motion, with the exception of Secretary French, who abstained and indicated he would need additional time to consider the Agency's position on the issue of implementation timeline. He has since shared his perspective on the issue of delay with the legislature and State Board.

At the May 6, 2019 Advisory Group meeting, the Group was informed that the draft set of Rules had been submitted to the State Board of Education, and that additional input to those Rules would need to be directed to the State Board. The Agency Rulemaking team shared a draft timeline for rulemaking, which included a discussion of the Rules and subsequent vote by the SBE in June. Given the short timeline and the fact that the Agency is no longer accepting feedback regarding the Rules, the Group felt it was important for the State Board to hear the substance of our discussions and a reiteration of the issues raised over the course of the Group's work this year, both as it pertains to the Rules and additional elements of implementation.

#### Maintaining the Stated Intent of Act 173

A clear theme in testimony leading up to the passage of Act 173 was the need for increased flexibility in the use of special education dollars and a corresponding decrease in cumbersome time documentation requirements related to those funding restrictions. It was well understood and agreed to by lawmakers at the time that such changes would be necessary in order to implement the systems changed called for in the law (and ultimately the cost savings).

In a memo to the field issued in August of 2018, the Agency of Education reiterated the importance of this flexibility, acknowledging that the census-based model “[a]llows increased flexibility in the use of funds; [a]llows the use of funds for all students, not just those on IEPs, to provide flexibility for early intervention if needed.”

The Agency of Education has informed the Advisory Group that issues of time documentation and maintenance of effort documentation (required by Federal statute) will be further defined in Agency procedures and guidance documents. These documents have not been developed to date, and therefore the Advisory Group has not had an ability to provide meaningful input into their development. Initial information shared by the Agency, however, has caused the Advisory Group to be concerned about whether the above stated intent of the law will be maintained given the Agency’s interpretation of Federal requirements. Although the Agency has provided the Advisory Group with restatements of what is required under Federal law, and citations of federal regulations, they have not, to date, explained the Agency’s interpretation of those requirements. This lack of information, combined with the Agency’s early suggestions that the flexibility in the law was “oversold,” have led the Advisory Group to have serious concerns about whether districts will be afforded the flexibility to implement the significant programmatic changes in the law. Further, the Agency has made general statements about their intention to “engage relevant stakeholders as they see fit” in the development of these procedures - which does not assure the Group that adequate attention will be given to the field in drafting procedures. In order for the law to be implemented as intended school systems must have the flexibility initially promised.

#### Additional Feedback Regarding Special Education Rules

Although the Group was able to provide input on an initial outline of the rules and a later, more substantive draft, the Agency has made clear that additional feedback regarding the special education rules needs to be provided directly to the State Board of Education. In anticipation of the Board’s discussion of the draft rules, the Group feels it is important to provide additional feedback to ensure that the full scope of the Group’s discussions are shared with the Board prior to beginning the rulemaking process.

The Advisory Group has been challenged by lack of clarity regarding procedures and guidance that are referenced in the draft Rules. The Agency has provided a set of Rules that refers to Agency guidance and/or procedures on several key areas of the law. Until the Advisory Group has an opportunity to view the Agency’s guidance documents the Agency’s interpretation is unclear. Therefore, it is essential that the State Board be aware that the Advisory Group is unable to provide substantive feedback to the Rules until they are able to understand the Agency’s position on the underlying procedures and guidance. These issues include:

- The issues of Maintenance of Effort and time documentation identified above
- Implementation of a multi-tiered system of supports (MTSS) and how the Agency will hold schools accountable for effective implementation
- The intersection of MTSS and ChildFind requirements, and overall concerns about the appropriate identification of students eligible to receive special education services
- Lack of clarity about special education funding for independent schools
- Results are forthcoming from the Act 173-required weighting study, which could result in recommendations regarding the calculation of the census grant

In addition, the Advisory Group believes that a public comment period that occurs over the summer is inadequate to ensure broad based feedback.

#### Commentary Regarding the Extension

The following is a summary of discussion points that caused the Group to recommend extending the implementation timeline.

##### *Professional Learning:*

The Agency of Education Technical Assistance and Professional Learning (TAPL) team has shared their approach to supporting districts in implementation of Act 173. It is the consensus of the Group that these presentations have not yet demonstrated that a clear framework exists to identify and support districts who are most in need of implementation support. The Agency has outlined a number of voluntary initiatives (funded by Federal grants and other sources) that support implementation of elements of Act 173. The Advisory Group, however, has been clear in their feedback to the Agency that such voluntary opportunities may be of high quality, but may not be reaching districts most in need of professional learning. They are often accessed by high performing districts and/or districts who have already conducted significant self-assessment and determined what support was needed. The bigger concern across the state is those districts who are unaware of or choosing not to access the professional learning.

Districts must have a clear understanding of implementation of a multi tiered system of supports and its intersection with the Federal requirements under IDEA. It is the consensus of the Group that the professional learning plan does not specifically provide clarity on how this will be provided; absent this clarity, districts and the state are at significant risk of violating Federal requirements.

In the absence of a clear plan, the Group has discussed concerns by some of its members that the Agency has no way of monitoring districts who may not be implementing the MTSS portion of Act 173 effectively, and that this may result in a denial of evaluation of a child suspected of having a disability under IDEA or Section 504. The Agency does not currently have policies and procedures outlining expectations under MTSS (as referenced in §2902(e) - §2902(g), nor do they have a way of monitoring implementation of those expectations once identified. In this scenario, there is question about whether or not the Rules need to specify expectations, as well as concern that Rules are not the appropriate vehicle for policy/procedure.

In short: The lack of clarity of the professional learning plan has made it difficult for the Advisory Group to move forward on issues of Rulemaking, and have prompted discussions regarding a recommendation for extension (see below).

##### In conclusion:

The work of implementing Act 173 is complex, as is the work of advising implementation. The intent of Act 173 was to provide districts more flexibility to implement the practices outlined in the District Management Group Report, enhancing the effectiveness, availability, and equity of services provided to students who require additional support. The funding model change represents a major shift in education funding and practice and it must be implemented in accordance with legislative intent. At this point, the Advisory Group is concerned about:

- 1) The current rule-making process and timeline, including a lack of clarity about how schools will document federal Maintenance of Effort requirements, and flexibility for SUs/SDs as intended by law and needed for practice change.
- 2) A lack of a comprehensive AOE Professional Development Plan as the first year of Act 173 passage and the end of the 2018-19 school year draws near.
- 3) Lack of progress on how independent schools will be included in the census-based construct.

The Advisory Group believes that in order to implement Act 173 effectively, both the Agency of Education and school districts need additional time to ensure the ambitious and important goals of the law are achieved.

cc: Kate Webb, Chair, House Education Committee  
Phil Baruth, Chair, Senate Education Committee