

TESTIMONY PROVIDED TO: House Education Committee
FROM: Meagan Roy, Ed.D. (Chair, Census-Based Funding Advisory Group)
TOPIC: Report of the Census-Based Funding Advisory Group
DATE: February 7, 2020

The second full report of the Census-Based Funding Advisory Group was submitted to the House and Senate Education Committees on January 15, 2020. The following is an Executive Summary of that report, offered to the House Education Committee to inform a discussion about the work of the Group to date.

Introduction & Approach of the Group

The Group continues to recognize Act 173 as landmark legislation designed to improve the systems of support (and therefore outcomes) of struggling students in Vermont. Contrary to how some have referred to it, Act 173 is much more than a “special education funding overhaul.” In order to adequately implement the shifts in instruction to better meet the needs of all Vermont learners, Act 173 will require focused attention on the part of the entire educational system, including teachers, Superintendents, principals, curriculum directors, school board members and Agency staff in addition to special education directors. The stakeholders represented on the Advisory Group are here as partners in serving the needs of Vermont children. The Group is committed to implementation of the Act in a way that provides excellent educational opportunities for students.

The Group strives to reach consensus in its work and has been able to adopt unanimous recommendations regarding the draft rules to date, professional development recommendations and other recommendations for the SBE. In the event that consensus cannot be reached, it is the Group’s intention to inform the General Assembly regarding the areas of agreement and disagreement.

Summary of Report

Act 173 requires that the Advisory Group report to the legislature on the following:

Advise the State Board of Education on Proposed Rules:

The majority of the Advisory Group’s work to date has been almost entirely focused on providing input and advice regarding the proposed Rules to implement the Act. This process has been challenging at times, as the Group navigates the Agency’s approach to the rulemaking process. The report details a timeline that illustrates the extent of the back and forth exchanges with the Agency in an attempt to ensure that the Rules would allow Act 173 to achieve one of its primary goals of allowing for flexible use of state special education funding.

The Advisory Group identified three core concerns with the Agency’s first draft of the 1300 series Rules (the new chapter addressing special education funding):

1. **Special Education Funding:** The Agency’s proposed definition was unnecessarily restrictive and conflicts with the Federal definition of special education
2. **Inappropriate Conflation of Multiple Funding Constructs:** Inappropriate connection 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. This overapplication of what is allowable for IDEA-B funds to the use of state & local special education funds would effectively eliminate the flexibility intended in Act 173.
3. **Use of State Special Education Funds:** The Agency’s proposed cost documentation guidance would not take into account the highly specialized delivery of general education in approved independent special education schools that are specifically designed to serve students eligible for special education or 504 services. This could impact an IEP team’s ability to determine the most appropriate placement and

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location for providing FAPE, potentially limiting a student's access to the full continuum of placements under IDEA. It also had the potential to result in significant impact to LEA general fund budgets if costs were disallowed.

Federal Education Group Report

Although the Advisory Group provided significant input to the Agency during the first half of the rule process, the Agency did not signal an attempt to address the above concerns in subsequent drafts. Following the May Advisory Group meeting and as a result of concerns expressed regarding the AOE draft rules, the Education Organizations (VSA, VCSEA, VSBA, VPA and VT-NEA) contracted with the Federal Education Group, a Washington-based firm that specializes in advising States on special education funding issues. The FEG report included the following recommendations:

- Amend the State's definition of "special education," as reflected in the State of Vermont Special Education Rules (adopted June 1, 2013), to be consistent with IDEA.
- Align State policies on the allowable uses of IDEA, Part B funds to federal definitions to help districts take advantage of Part B's full range of spending options.
- Permit districts to spend state funds on the full range of activities contemplated by Act 173, but also develop mechanisms to distinguish between MOE- and MFS-eligible versus ineligible spending.
- Explore strategies for reducing administrative burdens associated with monitoring and oversight

Current Status of Rules

As requested by the State Board, the Advisory Group provided recommendations at the December 2019 State Board of Education meeting. The Agency subsequently presented a revised draft at the January 2020 SBE meeting. Because the Agency did not incorporate all of the Advisory Group's recommendations into their draft, the SBE did not formally initiate the Rulemaking process. They tasked the Agency with developing specific explanations for why certain recommendations were not included, and then asked the Advisory Group to formally respond with final input as to whether issues with the Agency drafts were resolved. The Advisory Group will be submitting that update for SBE review on February 10th.

Areas of Rulemaking Identified for Further Discussion

Because it was operating under the Agency's process of focusing heavily on the creation of a special education funding chapter (the 1300 series), the Advisory Group had not had an opportunity to fully discuss several additional Rule-related issues. The Group identifies the following as potential issues for consideration:

- Series 2200 (Independent Schools): Act 173 requires the opening of SBE Series 2200 for revision. The timing for this work was not delayed when implementation of the census grant was delayed. The SBE is contemplating a revised timeline, and the Advisory Group recommends adjusting the timeline to allow ample time for 2200 series rulemaking.
- MTSS Implementation: Act 173 includes explicit requirements for both the Agency and school districts regarding the implementation of a multi-tiered system of supports. Act 173 speaks specifically to the development of policies, procedures and guidance governing MTSS implementation and specifies what elements need to be included in those documents. Individual members of the Advisory Group have proposed an additional, stand-alone Rule requiring LEAs to adopt MTSS policies.

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Advise the Agency and Supervisory Unions on Implementation:

As advised in the first legislative report in 2019, the advisory group would like to reiterate to the General Assembly that implementation of Act 173 represents programming and funding changes that will be significant for schools. Implementation will include systems and structural changes, significant professional development, and a shift in budgeting and funding that will impact practice.

Professional Learning

The Advisory Group has given significant input to the Agency regarding the need for high quality, long term and individualized professional development in order to implement the instructional components of 173. It has strongly urged the Agency to develop a comprehensive plan that:

- Is coordinated, well designed and consistent
- Includes a targeted approach to professional learning resources that will prioritize support to districts most in need of support based on identified metrics
- Includes financial support of existing Agency grants to support implementation. The CBFAG recommends setting aside IDEA funds for, at minimum, FY20, FY21, FY22 (extending current recommendation of FY19, F20, F21)

Although the Agency has provided a list of activities that have been partially funded by the IDEA-B setaside required by Act 173, it is the opinion of the Advisory Group that this approach to using the funding will not be effective in supporting districts. An October 2019 workgroup sponsored by the VSA and VPA outlined that sustained coaching and support would be necessary in order to assist districts, potentially achieved by a public/private partnership with organizations who can provide this level of professional learning.

Provide Recommendations to the General Assembly for Necessary Statutory Changes:

The Advisory Group has identified a number of areas in which the GA should consider statutory changes. This report outlines those issues below, but in most cases stops short of making specific recommendations. It is the intention of the Advisory Group to return to the General Assembly with more specific recommendations later in the session, as the group has had more time to discuss.

Clarification of revised implementation timeline, including adjustment of Rules timeline

When the general assembly enacted a delay in the implementation timeline for the transition to a census-grant model, it extended the transition to the census grant as well as delayed the development of Rules by one year. It was silent, however, on other issues related to the timeline (the length of time the AOE must set aside IDEA-B funds to support schools; the length of time the Advisory Group will exist and the number of meetings it is approved to hold; independent school rules, etc). The Advisory Group recommends that the GA consider each of the timelines included in the Act and specifically address any changes that need to be made with those timelines.

Continued Existence of the Census-Based Funding Advisory Group

The current legislation creates and supports the advisory group through FY22, related to the initial timeline. It is the opinion of the Advisory Group that its existence should match whatever revised timeline the GA enacts in its technical correction, so that the group is available to inform implementation as intended.

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Adjustments to the Uniform Base Amount/Census Grant Calculation

At the January meeting, the Advisory Group heard a presentation by the lead author of the weighting study that was convened as part of Act 173. As the GA is aware, the information presented in the study is significant and complex. The Advisory Group focused their discussion on the interplay between the overall changes to equalized pupil calculations that were recommended and the specific changes that could be made to how the census-based grant is calculated.

The most significant finding in the study is the acknowledgement that a census-based funding model assumes that school districts have roughly similar rates of students with disabilities - and yet in Vermont, there is significant variability across districts, creating the potential for inequitable special education funding in schools. The Group determined that it would be inappropriate to move too quickly to make recommendations regarding the weighting study without careful consideration of all its complexity. The Group believes it is important for the GA to understand the importance of the information and move cautiously in making changes.

Hold on additional legislation

The Group continues to agree that Act 173 represents landmark legislation for schools, and passage of additional education legislation will put implementation in jeopardy