

TESTIMONY PROVIDED TO: State Board of Education Subcommittee on 2200 Series Rules

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

TOPIC: Summary of Report to the General Assembly, January 15, 2022

DATE: January 12, 2022

The Census-Based Funding Advisory Group has continued its work throughout this unprecedented time in education. We continue to recognize that the educational structures of MTSS required under Act 173 are critical to improving outcomes for struggling students in Vermont; however, the existing challenges in realizing full implementation of this law are now complicated by the ongoing situational impacts of COVID19 and a critical staffing shortage. The following testimony is meant to be a summary of the Census-Based Funding Advisory Group's full report, which is due to the General Assembly on January 15th.

Advise the SBE on proposed rules

1300/2360 Series (Special Education Funding & Programmatic Rules)

The Advisory Group's work on the 1300/2360 Series rules have been addressed in previous Reports at length, and the Group has not spent time specifically on these Rules this year. However, they have discussed them as part of the conversations about implementation timeline. A more comprehensive summary of issues related to this rule series and Act 173 delay is below.

2200 Series (Independent Schools)

During the 20-21 school year the Advisory Group participated in a series of stakeholder meetings convened by the Agency of Education to inform the development of the 2200 Series draft Rules. The stakeholder group discussed a number of issues associated with the rule development, but in particular focused on two areas: 1). Ensuring that enrollment practices for independent schools that accept public dollars are non-discriminatory, particularly as it pertains to disability; and 2). Ensuring sufficient transparency around the rate setting process for independent therapeutic schools so that there are assurances that public special education dollars are being spent prudently. Ultimately, the Advisory Group **endorsed** the draft Rules that were informed by the stakeholder group and later opened for public comment during the 2021-2022 school year.

In late November of 2021, a number of public comments were submitted to the State Board that related to the same two primary issues of importance to the Advisory Group. The State Board's subcommittee on the 2200 Series Rules asked that the Advisory Group discuss whether they would recommend changes to the SBE's current draft in light of the public comments. The Advisory Group noted that because the same two issues were again raised during public comment it would be prudent to consider the comments and determine whether adjustments to the language would be recommended; this summary is organized around those two issues.

The Advisory Group believes the language in the currently proposed rules could be improved for clarity around certain issues raised during public comment. A small group of Advisory Group

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members continues to work with the SBE subcommittee on possible recommended changes to the draft rule language. The following is a summary of the issues discussed:

Non-discriminatory enrollment practices

(2229.4 Procedure for Publicly Funded Students Receiving Special Education Services to Enroll in an Approved Independent School): A number of public comments centered around ensuring that independent schools who accept public dollars enroll students on a first-come, first-served basis regardless of disability status. The comments questioned whether 2229.4.1(a) ensured equal access to space at an independent school, because of the language “[T]o “enroll” a student means that an approved independent school will offer a position in the school to a student, provided that the provisions of this subsection relating to LEA responsibilities are met *and the student meets the other requirements of the school’s enrollment policies* [emphasis added].”

Although the Advisory Group felt, in its initial support, that this language did adequately signal nondiscriminatory enrollment procedures, the issue was important enough that it was willing to entertain clarifying language regarding “other requirements of the school’s enrollment policies.” However, as of the writing of this report there was not consensus agreement on alternative language. **The Advisory Group did affirm its full consensus support for ensuring that the 2200 series rules require nondiscriminatory enrollment practices, and that students with disabilities are not prevented from enrolling in independent schools accepting public dollars solely on the basis of disability.**

Financial Transparency and Accountability

(2232 Rate Approval for Therapeutic Approved Independent Schools): Public comments also raised concerns about the need for financial transparency and accountability as it relates to rate setting for therapeutic independent schools. The comments suggested that the current draft rules did not provide sufficient accountability to the Agency of Education for reporting of financial costs, and that this lack of accountability puts LEAs and taxpayers at risk of supporting costs that are not fully associated with providing services to students.

While the Advisory Group did have a lengthy discussion about these concerns, **it did not recommend changes to Rule 2232.** In making these determination it relied heavily on the perspective of Agency of Education staff, who reported that the current draft rule requirements provide appropriate transparency, and that additional reporting would be burdensome to independent schools and was not required to satisfy their accountability needs.

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Advise AOE and supervisory unions on implementation

Professional Development for MTSS and Associated Rule Changes:

The Advisory Group continues to have significant concerns about the magnitude of implementation impact for LEAs related to Act 173. In addition to the MTSS implementation that has been discussed at length, the passage of the 2360 Series Rules has created two additional and significant changes that school districts are required to implement. Guidance for implementation of the rule changes has only been partially released as of the publication of this report, leaving less than six months for school districts to adequately train their special education and general education staff. While a full technical description of how the rule changes impact schools is beyond the scope of this report, it is clear to the Advisory Group that the changes only magnified the challenges school districts are facing regarding implementation - all during a time when schools are critically understaffed and still reacting to the ongoing impacts of COVID19.

Recommendations to General Assembly for necessary Statutory changes

The Advisory Group is required to make recommendations for any necessary statutory changes to the Act. Currently, the primary issue that the Advisory Group has been asked to address is the issue of the implementation timeline (Act 173 is slated to go into effect on July 1, 2022). **At the time of this testimony, the Group does not have a formal recommendation for the General Assembly to consider.** Below is a summary of the major issues related to implementation timeline. The Advisory Group believes strongly that the General Assembly should be aware of the following issues, and reserves the right to submit additional recommendations during the legislative session. The Group acknowledges that it may approach the General Assembly later in the session with a more formal recommendation.

Implementation Timeline Changes

Unequivocally, this group believes that Act 173 is critical legislation that needs to be enacted to have a positive impact on Vermont's struggling learners. Over the three years of this group's existence, however, we have continually articulated the magnitude of change the Act requires of LEAs and the deep and comprehensive professional development required of systems for successful implementation. As the state approaches the third year of the pandemic, we again find ourselves facing the implementation date of Act 173; this time, in the midst of unprecedented impacts on schools. The ongoing situational impacts of COVID19 combined with the related and crippling workforce shortages make it extremely difficult for LEAs to move forward the work necessary for them to be prepared for implementation.

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With this reality in mind, the Advisory Group convened a working session in late December to attempt to surface a number of options related to the implementation timeline, and identify advantages and disadvantages of each. Secretary French also indicated that the Agency was hoping to benefit from the voice of the Advisory Group to inform its official position, which it expects to have in early February.

The following is a summary of several options and advantages and disadvantages of each option. The Advisory Group is not identifying any one option as preferred, but rather surfacing issues.

Option: No Delay <i>Act 173 and all associated rule changes go into effect July 1, 2022</i>	
Advantages	Disadvantages
Act 173 and its original intentions were supported by VSA, VSBA, VCSEA VT-NEA and VPA as well as the advocacy communities. The reasons for this support haven't changed Some districts are ready for implementation (though there is acknowledgement that this may be the minority) There is a recognition that MTSS has been part of legislation for some time, but there are accountability measures in Act 173 that are needed in order to cause implementation of MTSS Some groups, particularly in the advocacy community, believe the a delay in the 2360 Rule changes would have significant impact on students with disabilities	The reality is that some systems simply won't be able to implement the tenets of the law on July 1 Regardless of the implementation challenges that existed before the pandemic, staffing shortages and capacity of LEAs has been impacted by COVID19. These impact staff's ability to participate in the PD needed to implement the law The existing timeline risks poor implementation, impacting the strength of the desired policy changes. This may produce more damage than moving forward in a more thoughtful, measured way Professional development has been an ongoing challenge identified by this Advisory Group and arguably has not been adequately supported/facilitated.

Option: No Delay in Act 173; delay in 2360 rule changes not associated with Act 173 <i>Act 173 (MTSS and census grant) go into effect on July 1. Rule changes not associated with Act 173 (adverse effect and SLD identification) are delayed by one year</i>	
Advantages	Disadvantages
LEAs feel these rule changes have become the "one more thing" that came on top of the challenges of 173. If the rest of the law went into place and these changes were delayed, it would give more time to put those into place while preserving the welcome changes to funding and MTSS.	Advocacy community likely would not support this Main issues at this point are situational - related to COVID - and are different than the systemic challenges regarding lack of MTSS implementation

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Option: Change to a Census Grant delayed but programmatic changes go into place	
Advantages	Disadvantages
There hasn't been enough discussion of the interplay between the pupil weighting changes and the shift to a census block - so delaying the financial implementation would allow for this discussion	The Census grant impact that is of concern for some districts is beneficial for others - so possibly this would only shift the financial impact Budgets are likely being built with the changes as they exist currently - so a change could be a challenge to budget building The yield and the education fund surplus could be a bridge to adjust to the new financial model and therefore now is a good time to implement (not delay).

Option: No implementation date change but a formal recommendation about professional development	
<i>Advisory Group would make a more formal recommendation to the general assembly to charge the Agency with identifying districts most in need of implementation support and providing targeted support to those districts</i>	
Advantages	Disadvantages
This would allow the policy to be enacted for all the reasons noted above, but would acknowledge those systems who need support and would provide it. ESSER/recovery funds provide ample funding to support targeted professional development	Doesn't eliminate the situational challenges everyone is experiencing, including those more prepared to implement pre-COVID

Submitted on behalf of the advisory group by:

Meagan Roy, Ed.D.

Chair