

Nonpublic School Advisory Council
NH Department of Education, Office of Nonpublic Schools
Monday, March 22, 2021
MINUTES

Meeting held telephonically due to the COVID-19 State of Emergency.

Members in Attendance:

Andrea Elliot (Brad Choyt)	(Gina Power) Linda Brodeur	Nathaniel Greene Shireen Meskoob
Caitlin Davis	Linda Johnson	Susan Harrington
Christy Whipple	(Lisa Dias)	Toby Iselin
Chuck George	Matthew Hicks	
Dave Thibault	Mike Runey	

TIMELINE OF RULES REVISION

D. Thibault asked if there was a timeline or due date for the Council to complete its revision comments. N. Greene indicated that the DOE wants to complete this stage of the process relatively quickly, within the next two to three months, and provide that initial draft to the State Board. Once the Board has a copy of the revisions, there will be public hearings on it, and at that point it will be open to the wider nonpublic school community or anyone who has an interest in the nonpublic schools. Individuals will have the opportunity to provide written or in-person testimony.

DUTIES OF THE NONPUBLIC SCHOOL ADVISORY COUNCIL.

p.29 of merged rules (version 2.25.2021):

D. Thibault directed the Council to the mission, where the NSAC is instructed to carry out the duties assigned by Board, etc. D. Thibault suggested that he and a small subcommittee could draft changes to the mission and duties, and provide that to the entire Council at the next meeting.

M. Hicks suggested that the Council flesh out the idea of NSAC encouraging and developing nonpublic schools. D. Thibault suggested that the more vague section 408 was, the greater the chances that it would open to interpretation. It is desirable to clearly identify the purpose of NSAC. M. Hicks highlighted that under no. 1 for Ed 408, the last 4 words “in the approval process” seems again focused on initiation only. As we witnessed last year, many state agencies became involved in sustaining nonpublic education. He recommended to strike the emphasis on the approval process and add “state and local agencies involved establishing and enabling nonpublic schools.”

D. Thibault suggested that the Council should be supporting the ongoing needs of the nonpublic school community, encouraging its development. This is important because the purpose to this group is to go beyond the approval and appeals process. We have, for instance, discussed training sessions, public speakers, and providing the vehicles for what the schools need, directing them to resources that we currently have, and identifying additional resources that we could help facilitate their operation. L. Johnson emphasized the Council’s position as serving as a liaison between the NH DOE and NP school community.

GRIEVANCE COMMITTEE

p.31 of merged rules (version 2.25.2021):

Attention turned to grievance procedures, one for the approval process, and one for complaints brought by parents and students against a school. It should be clear what the duties of the Council are in these instances. D. Thibault suggested that we take off those grievance process for parents and students because there are other avenues for individuals in nonpublic schools to get heard. C. Davis indicated that the Board may not agree to that one. She discussed how in public schools, grievances go to the local school board, and then if further action is needed, they go to the DOE which plays a role as an intermediary between parent, schools, and the Board.

D. Thibault discussed how the operation of nonpublic schools is different from public schools and therefore in regard to the grievance requirements this should be acknowledged. A nonpublic school is a single entity, and depending on what the grievance, there are additional implications. There are so many more variables involved with nonpublic schools that set it apart from public schools and the process that is set forth for them. M. Hicks shared that the nonpublic schools have a board of directors, and that parents have other options to pursue in regard to grievances. The point to being an independent entity, an independent school, is after all to allow us to function differently.

D. Thibault states that it would be better for all nonpublics to ensure they have a built in grievance process. Nonpublic schools have a board of directors, and if you are religious sponsored school there will be a hierarchy. **M. Hicks indicates that to maintain the independence of nonpublic schools there should be little if any outside agencies involved.**

L. Brodeur asked who was on committee before and what kind of grievances were heard. L. Johnson shared that there have been few grievances in the past, and while personally she thought those grievance regulations stepped over boundaries, the state is interested in the well-being for all children.

The Council discussed how it is already a leap for the state to be involved in academic and program approvals. It's even more egregious for the state to step into the grievance process. But these regulations passed. We may want to look at it again, and see if the state has the right to intervene. Independent processes by schools must have a "due process", within their own system. Should the umbrella of the jurisdiction of the state be removed? Nonpublic schools and the state can still work together to address problems, like transportation and buses, but what should be codified and is it supported by statute?

GRIEVANCE DEFINITION

p.34 of merged rules (version 2.25.2021):

N. Greene turned attention to the rules in Ed 409 and indicated how narrow a grievance is actually defined. It is limited to **abuse, neglect or harassment by a teacher or administrator**. D. Thibault indicated that the idea that nonpublics don't have due process or an appeals process for grievances is a misconception. N. Greene indicated that there is some education we can provide to the field about this. Right now parents file grievances but those grievances don't fall into this narrow definition in Ed 409. Oftentimes we hear about a parent not paying tuition, the school un-enrolling the student, the extenuating circumstances, etc. and this is not an example of abuse or neglect, so it would not come before the Council. In those cases, the DOE kicks it back to the school, at which point it goes to the board of trustees or directors.

D. Thibault revisited his suggestion that a smaller group, a **subcommittee, flesh out some of this language about the establishment of NSAC** and that the committee would bring it back to the whole group allowing a more meaningful conversation. The subcommittee can come up with concrete recommendations and language.

N. Greene can reach out to S. Berwick about cases that went through the process outlined in Ed 409.

ED 400 TERMS

p.4 of merged rules (version 2.25.2021):

L. Johnson honed in on the statutory authority, and how the rules give meat to the bones, She identified how terms are used interchangeably, “nonpublic school” “private” “independent.” We should be consistent in rules and define nonpublics as “**private or independent school.**” N. Greene shared that some of those changes are in the track change version of the rules, the use of terminology, the order of contents. The goal right now is to provide clarity, and to try to get stakeholder engagement prior to giving the merged draft to the Board, before the rulemaking process. The Council is being provided with this full draft first, and later it will be brought to schools too. Two versions, the current and revised, are merged to create a single track change version.

Should charter schools definition be there in Ed 400 too?

D. Thibault suggested that before we move on, a subcommittee be organized to look at Ed 408. It will be comprised of L. Johnson and M. Hicks, who volunteered.

ACCREDITING VERSUS RECOGNIZED AGENCY

p.3 of merged rules (version 2.25.2021):

N. Greene shared his screen, the merger of the two documents, and indicated that the group will have a copy of this to look at before the next meeting so they can see exactly what changes have been made. The word accrediting was removed and replaced by a recognized agency, because there has been some confusion around the idea of accreditation. Organizations might provide school approval, and hence they might accredit those schools. However that doesn't mean that those schools automatically have a program approval. The DOE has to *recognize* program approval agencies before a nonpublic can be awarded an AP status. In other words, **accrediting bodies are not necessarily bodies that the DOE recognizes.**

PRIVATE PROVIDERS OF SPECIAL EDUCATION PROGRAMS

N. Greene had a meeting a week ago on the topic of private providers. One thing that came up is that private providers go through a rigorous approval process with Bureau of Student Services (BSS) in order to have special education programs at their schools in which they can take students by the school district who pay for the students to attend that nonpublic school. There are those who want the SPED process recognized the same way as other agencies are who approve school programs.

If we recognize the SPED program approval process in that way, those private providers would be allowed renewals every five years instead of three. This is not the same as the recognized agencies that approve the school's overall programs though. Here we are talking about a different state agency, the BSS, going into the school and conducting an intense approval process in that school. So this is a possible revision to consider. Another consideration is that for a private provider to pursue a program approval by the BSS, and then on top of that seek program approval by a recognized third party agency, is overwhelming.

In making a possible change, we would have to either add a single sentence, such as “if a school has received approval from BSS for program approval, then the DOE may award a status permitting a 5-year renewal term.” Or we can recognize the BSS as equivalent to one of the a third party program approval agencies that NSAC approves. The problem with the second method is that the BSS requirements are not equivalent to the requirements in rules for accrediting bodies, because they are specialized in criteria for providing special education programs only. C. Davis indicated that a SPED program approval carries a very different connotation to a recognized agency that accredits a school’s entire academic program.

Unfortunately, AA renewals are out of sync with renewals by the BSS, and that requires a lot of more work for private providers because of this. L. Johnson suggested that we should get private providers from a three to five year renewal term. N. Greene indicated that the DOE would have to have a conversation with BSS to get the right language in our rules. The Ed 400s may need a sentence that equates SPED program approval terms to a third party program approval agency, as one option. D. Thibault indicated that a purpose would need to be drawn into the connection we are making, one around program approvals, which would clarify and justify the decision to “equate” the two, or provide the same renewal term to the two.

N. Greene is inclined to state the following in the rules, “a nonpublic school program approved by one of the recognized agencies OR a nonpublic school that receives SPED approval through BSS may be awarded with a five year approval term.”

T. Iselin pointed out that private providers are given an AA status, which doesn’t sound as good to people because it’s an AA status indicates that a school is approved for attendance purposes only. Those providers have actually undergone a rigorous process and that should be acknowledged by the public. Those providers have gone above and beyond requirements of an AA approval status.

ED 400~ LANGUAGE OF RULEMAKING

p.4 of merged rules (version 2.25.2021):

N. Greene returned to the revisions in Ed 401.02. The goal was to clean the language, remove terms like “and/or” or “including but not limited to”, which are vague and confusing. The same goes for the use of “shall” and “may”. “May” indicates that schools have an option, but if you want everyone to do something the term “shall” is required.

PRESCHOOLS AND DHHS

p.4 of merged rules (version 2.25.2021):

D. Thibault commenced discussion on preschools and kindergarten. If they are stand-alone entities, they are required to follow the rules by DHHS. If they are part of an elementary school, then the entities follow the nonpublic school rules, which have very little overlap with the DHHS rules.

N. Greene indicated the main issue in which exemption of a preschool from DHHS licensing sets up a gray area because nonpublic approval standards are written from the perspective of grade schools. We don’t have standards for young children and infants. Kindergarten is okay, but there are a lot of licensing requirements DDHS has for preschools that don’t exist in our rules. Do we need to close that loop?

C. Whipple shared that in 2005 her school consisted of only pre K and K and that they had a license under DHHS. Even though they added first graders and became license exempt, it didn’t mean they

didn't follow those guidelines. N. Greene indicated that lots of schools that started the way Christy's did knew the licensing rules.

The issue come up when there are nonpublic schools who have never been in that field and have never worked with DHHS, and we don't have guidance at DOE for those schools. Those schools are not required to follow that DHHS guidance, and the Ed 400s have nothing for requirements for preschool and lower. D. Thibault indicated that it is worth looking at the differences we have to consider if we wanted to make change. C. Davis said that what **we are trying to avoid is a situation where a handful of schools are not following any preschool requirements by DHHS.**

A council member asked about the age gap we are concerned with. C. Whipple shared that preschoolers are defined as children as young as 2 years and 6 months.

N. Greene shared that he has spoken to town inspectors who ask him, "well how do you want us to inspect this building?" and that is a difficult question to answer. D. Thibault commented that any school that has a program for young children requires a whole set of different needs in terms of licensing.

L. Johnson suggested that we look at DHHS rules, and draw them together with our rules. N. Greene noted that in taking a look at what those additional DHHS pieces are, we would want to make sure it does not pose additional undue burden on the schools. We don't want to overly complicate it.

S. Meskoob drew attention to DHHS child care licensing rules, consisting of over 100 pages. The primary areas that overlap are the physical building safety pieces. Little to nothing else overlaps. There is a significant set of regulations in the operation of child care centers. **N. Greene indicated that the DOE would pull out the important pieces of the childcare licensing rules and bring it back to the Council.**

NEW FACILITIES AND SAFETY REQUIREMENTS

p.5 of merged rules (version 2.25.2021):

L. Johnson requested clarification of the requirements around adding a new facility, to indicating any building or structure that **students have access** to (e.g. in addition to academic buildings, residential halls should also be included in meeting local and state safety requirements).

TIMELINE~ SCHOOL OPERATION AND STATE BOARD APPROVAL

p.6 of merged rules (version 2.25.2021):

N. Greene shared instances in which applicants reached out to the DOE, started the approval process but did not complete it, and began nonetheless enrolling students without state board approval. C. Davis shared the issues around enrolling students, collecting tuition, and then parents coming to the DOE to address their complaints about tuition, such as requesting but being denied a refund from the school. The DOE has no authority in those situations to require a school to return tuition, when the school is not approved in the first place. The issue becomes further problematic when the state board denies approval and the school operates anyways.

L. Johnson commented that advertising is a vague term, and a school in preparing for approval and opening its doors may need to buy space and engage in conversations with the public, required to meet the deadlines that are set. C. Whipple suggested that a new school be allowed to advertise to students (since gauging interest in a school is a large factor in deciding its feasibility, for instance) but make clear approval by DOE is pending. C. Davis suggested that maybe we limit the language to enrolling students and charging tuition. We are trying to avoid circumstances in which a school operates without approval.

Consider for instance students placed in a building that did not have a fire inspection or health inspection.

D. Thibault suggested that applicants be told they **shall not charge for or deliver services**.

C. George brought up another potential issue with the way it currently reads; it could be misleading, that schools may think they cannot advertise unless the board approves that advertising. N. Greene indicated that the DOE will work on the language, will be more specific to the events it is trying to prevent.

REMOTE INSTRUCTION AND VIRTUAL SCHOOLS

p.7 of merged rules (version 2.25.2021):

N. Greene turned attention to the school year, how a revision would allow school authority to operate remote instruction without having to submit a plan to state, at the discretion of the school and their board of directors. L. Johnson indicated that the language would allow for a school to become a virtual school. N. Greene shared that the DOE is looking at virtual schools, its benefits and pitfalls.

L. Johnson suggested adding language around “**exigent circumstances, emergency orders, fires epidemics, etc.**” to provide limitations if we don’t want to move to a completely virtual school approval. D. Thibault brought up the issue that it is not desirable for a school to start brick and mortar and pivot into completely virtual.

N. Greene shared that we have two virtual schools right now. A charter school, VLAX, and a nonpublic school, US Performance Academy. The latter runs remote instruction because their students are athletes that travel frequently around the country, and so the school has approval because of that circumstance.

The issue is if we leave it too open, virtual schools that exist in another states can seek approval from our office, and operate in Florida, for instance, and use that as a work around because their state approval process is more rigorous; they can **bypass their own DOE statutes and regulations**. C. Davis shared that we need to figure out a non-workaround, so to speak, to approve virtual schools, when their intention is for people who want to educate NH kids who now like the virtual setting. We need to see that it is clear that the virtual schools provides a benefit to NH families and students.

L. Johnson emphasized that we would need to figure out what shall be required of virtual schools to ensure the intent. We need to consider hybrids as well; we have to be ahead of that.

N. Greene has already proposed rules that deal with distance education in public schools, defining a school year, “distance education” plan, and multiple instructional options. The public education rules provide a good framework.

With respect to exigent circumstances, one issue is, who defines what that circumstance is? Is it the school board, parents school board?

SCHOOL CHOICE AND GOSHEN

C. Whipple shared an issue her school and community is dealing with. The town of Goshen doesn’t have any school so they use school choice to place their students. Their board is composed of five individuals who don’t believe nonpublic schools should be a consideration for its students. Croydon, however, is an

example of how one town is appropriately taking advantage of school choice and nonpublic schools, and why the system works.

Goshen however is failing to understand the school approval process, including the difference between AA and AP statuses. The town assumes that schools whose academic program is not approved are inadequate. C. Whipple asked if the NSAC could communicate with Goshen, even though her school is providing accurate information, because ultimately the town doesn't trust the school. C. Davis suggested that Goshen call the DOE and we can provide that validation.

LOOSE ENDS~ GRIEVANCE COMMITTEE

p.31 of merged rules (version 2.25.2021):

With respect to a Grievance Committee, nine members are required, but as we revise the rules and numbers involved, we can operate with fewer. Five is suggested, considering the current size of the Council. D. Thibault pointed out that as a member on the Committee for five years, no grievance were ever submitted.

NEXT MEETING

The Council agreed to a follow-up meeting for **Monday, April 5th, 2021**, to continue discussion on Ed 400 revisions.

Meeting minutes from January 21, 2021 were accepted.