

Nonpublic School Advisory Council
NH Department of Education, Office of Nonpublic Schools
Monday, April 5, 2021
MINUTES

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

Members in Attendance:

Andrea Elliot
(Brad Choyt)
Caitlin Davis
Christy Whipple
Chuck George
Dave Thibault

Gina Power
Linda Brodeur
Linda Johnson
Lisa Dias
(Matthew Hicks)
Mike Runey

Nathaniel Greene
Shireen Meskoob
Susan Harrington
Toby Iselin

ED 400 REVISIONS ~ CONTINUED FROM MEETING HELD ON 3.22.2021

N Greene clarified that while in submitting the required elements of an application, nonpublic schools are not held to a standard, the DOE looks to see that an item is submitted, not whether an item is good or bad, of quality or not. For example, we do not judge a tuition refund policy. We look to make sure there is one. We do not judge an anticipated budget. We look to make sure there is one.

N Greene indicated that if the council saw places in the rules where sentences have been struck out, that doesn't mean that the DOE necessarily deleted those sections. The attempt was made to combine similar sections together into a single requirement. Other sections may have been moved to their own, individual locations later in the document if it made more sense, such as a description of annual reports. This applies to both AA and AP schools, and so it was moved from the section on AA to its own section. Part of the other goal was generally to provide a little bit more clarity to requirements to facilitate the application process for schools. Lines or phrases that were deleted included redundancies, such as ongoing mention of attendance purposes within the section titled attendance purposes.

N Greene shared his screen of the Ed 400 draft as the Council continued to provide feedback. G Powers questioned the **APPLICABILITY OF "DISTRICT"** in 401.03(e). That will be changed and the word district will be removed. N Greene indicated that there is a new section that was added to public school rules about **REMOTE INSTRUCTION** that will likely be added to nonpublic rules as well.

N Greene continued. One of the sections that was expanded in the rules was on **STATUTORY REQUIREMENTS**. It is difficult to determine exactly how a school complies with each of those statutes. Therefore a statement indicating that the school complies with each of the statutory requirements is provided in the applications; schools are expected to certify the statement, indicating their understanding and compliance. In the rules, the title of the requirements were added instead of solely a reference to the law, which makes it easier for schools to understand what is being asked of them in the rules and what they can anticipate in the application.

G Powers questioned whether this section necessitated a rule change every single time there's a new statute that's adopted and required of a nonpublic school. For example, if there is a legislation relative

to emergency plans for sports injuries, then that would likely have to be included in the rules. While the department doesn't amend the rules every single time something like that happens, how does it ensure that all statutes are included when those changes are made?

N Greene indicated that nonpublic schools who would have to follow it, whether the department puts it in the rules or not. Really, these selected statutes that were put into the rules and into the application was a way for people who were starting a nonpublic school to see specific laws that would apply to them. **IT MIGHT BE BETTER SERVED TO JUST REMOVE IT FROM THE REGULATIONS ALL TOGETHER, AND HAVE A RESOURCE SHEET** that the nonpublic schools office provides to those schools when they're going through the application process. As opposed to adding additional regulations because it is correct, statutes are changing constantly and we don't want to keep going back through the rulemaking process.

L Johnson noted that it does help to see a list of the statutes because if a school is interested in starting a school, they're probably going to begin by looking at the website. To see all the statutes in one place, rather than plucking through the General Court rules and distinguishing items that relate to public versus nonpublic schools, is useful. So we can **KEEP THE STATUTORY REQUIREMENTS THAT CURRENTLY EXIST IN THE RULES, AND THEN HAVE A CATCH ALL PHRASE** that says: nonpublic schools are required to comply with additional laws that may be adopted by the legislature that is applicable to nonpublic schools. So either let's take it out, or keep it with the catch all phrase so that you do not have to amend it each time.

N Greene noted that we could have a statement at the end of the application that said that schools are required to comply with statutes as outlined in Ed 400 and additional statutes. Or that schools are required to comply with relative statutes and leave it at that. In this case, the onus is going to be on that organization to ensure that they know the statutes, that they're following the law and understand that they're in compliance.

Coming up with a resource sheet is also useful. (This does exist in a document on the website titled "Statutes and Definitions for Nonpublic Schools." We need a protocol to ensure maintenance of the document, a channel by which the Office of Nonpublics is notified of legislative changes).

N Greene continued. Under the section of the **BUDGET**, we tried to simplify it because schools approach budgets in a variety of ways. Originally, the rule contained some very specific categories that didn't necessarily always fit into the kind of budgets that schools were submitting. So we pulled out the very specific categories and asked for simply a budget that included anticipated expenses and sources of revenue. That provides a little bit more freedom to the schools that are applying who may submit their budget in a format that exists as part of the school operation, instead of modified it to fulfill a rule and in the process.

A new line was added, something that has always been required and that now we have added into the regulations as part of the approval process. Schools need to submit proof of registration with the New Hampshire **SECRETARY OF STATE**, as required by statute. While that is something that we've been doing over the years, it needs to be codified and followed consistently.

Under the section of the use of **CHILD RESTRAINT PRACTICES**, we indicated the specific statute where schools can find the requirements. This is one area we get a lot of questions about. Child restraint policies are often relevant to private providers of special education. But it is required of all nonpublic schools to have a policy. Granted many of the schools are not running special education programs or

they don't have practices that pertain to restraint. In that case, the school needs to disclose that they do not use child restraint and seclusion policies.

The next section pertains to the location and description of **FACILITIES**, including any off campus facilities that are also used. We want to make sure that we're capturing all of the different facilities that students might have access to as part of a nonpublic school program, even if those facilities were off of the main campus.

In the next part we've added some additional information, the procedures for the request of a **STATUS CHANGE**. This is something that actually happens a surprisingly large amount. When schools move, they might move from one building to another building, they might construct a new building on their campus, or they might close one school and open a new school in another town.

Primarily, changes in school **FACILITIES OR CHANGES IN GRADE LEVELS** that are offered are common. These are two areas that the State Board of Education would have examined as part of the school's initial application or last filing. We are asking that nonpublic schools notify the DOE of those changes 60 days prior to that change, so the State Board has time to review those changes. That way we make sure that the DOE is providing the most accurate information out to the public. For example, if a school was approved as an elementary school and decided that it wanted to add a middle and junior high school, then that is a significant change to the structure of the school and one that the Board needs to review.

In terms of the locations and **FACILITIES**, the reason we ask for notification is because we need to be able to go back out to conduct a site review to ensure that fire and health safety inspections are completed to the satisfaction of the town.

L Johnson asked whether notification has to be sent prior to the plan to make the new building, prior to breaking ground, or after it's done and before use. It's not clear what kind of notice has to be given. N Greene responded and said the DOE is thinking in terms of **PRIOR TO STUDENT ACCESS FOR SAFETY REASONS**. It helps us make sure the buildings have passed safety inspections, that our DOE inspector has had the time to conduct a site visit, and that we have the correct information in our databases. (DOE inspector has recently asked for a 3 month notice).

N Greene added that the Department of Education is required to do a **FACILITY VISIT** anytime there's any sort of new building that students will have access to (clarification should be made that one particular inspection, the health inspection, is relative to a facility that students *occupy*, because administrative buildings are structures that students have *access* to and those structures are not subject to a health inspection). What we need to do is specify in here that it's prior to student accessing the facility.

G Powers asks about the inspections that the DOE is required to do, whether they are above and beyond what someone would need to do if they were building a new facility. A copy of the health inspection required by the DOE is reviewed. C Davis indicated that the DOE doesn't want to be faced with a situation where a school indicates they have a new building, are opening it tomorrow, and that there will be students in it. L Johnson noted that it will be worth **DEFINING A FACILITY AND DEFINING ACCESS AND OCCUPATION OF ONE**.

N Greene re-reviewed the second type of change that schools would notify the DOE about in advance. When we talk about changes to **GRADE LEVELS** that will be provided, this is information that the State Board reviews, as it does with a school's initial application. A nonpublic K to five school may decide to

expand into a K to 8 school, as discussed above. This is outside of what was initially approved by the State Board so they want to be able to review those changes because it is a significant program and structural change of the school.

In terms of the **FACILITIES** piece, that's not necessarily something that needs to go to the State Board because it's a logistical and physical change whose approval hinges on the official fire and town inspectors as well as the DOE facility management team. We need to make sure those forms are complete and that students are safe. So we'll work on clarifying this section.

Ed 400 continues into the section on **APPROVAL FOR PROGRAM PURPOSES**. It is very similar to the changes made in the section on approval for attendance purpose. The program approval section used to contain language that referred to items listed in the AA section, but was worded differently. Our goal was to ensure consistency in language. Anytime the exact same information was requested in each section, we ensured that the same wording was used in each section.

L Johnson asked for clarification in regard to "Program approval shall be deemed recognition by the state board that a school's curriculum, staffing, administration, governance, and facilities meet an approved third party standard for the appropriate delivery of education." The third party standard in reference to the DOE recognized third party **PROGRAM APPROVAL AGENCIES** should be made clear.

L Johnson noted that if she were working in a school she wouldn't know what is being asked of in the section where schools are required to provide information relative to the **SCHOOL PROGRAM AND THE COMMUNITY**. How is that information reviewed? What is being asked of schools? N Greene explained that the school community includes parents and the local community, which we can either clarify or remove all together. L Johnson looked at State Board Ed 21 and 9, which says that standards include responsibility between the school and community. So it might be trying to get at that. But it's not fair to ask somebody something that's so ambiguous. If we are not going to strike it out, we should clarify it.

G Powers had a question about approvals. Section 404.02 states that a nonpublic school recommended for **DENIED APPROVAL** shall have 10 business days to make a request to the commissioner for a **GRIEVANCE HEARING** etc. What happens to the school while the grievance process is underway? Are they required to shut down? L Johnson said she thought there was a section in grievance that allowed the school to continue to operate while the grievance process took place. N Greene said that it may be something we need to clarify.

A Elliot brought up that illogical use of a "denied approval." Either a school is denied or approved.

L Johnson pointed out that there are **TWO TYPES OF GRIEVANCES** covered at the end of the rules. One that has to do with safety and violence, and the other that had to do with decisions of the State Board.

L Johnson also identified the section under an Appeal of a State Board decision, that "Any party aggrieved by the decision, may appeal the decision of the state board to a court of competent jurisdiction within 30 days of the decision. **PENDING APPEAL, THE NONPUBLIC SCHOOL SHALL CONTINUE TO OPERATE.**" (Section 409.06). Something similar should be added to other relevant section to clarify what a school is allowed to do during these processes.

S Meskoob mentioned how in terms of **SHUTTING DOWN A SCHOOL**, if the school is not operating with approval, there is no meaningful recourse of action. We may want to implement a fines table. N Greene

clarified that currently the only means of action that we have as a department is that the State Board can **REVOKE A SCHOOL'S APPROVAL**. If that happens, then all of the students that are attending that school are now violating this state's laws around attending an approved school program and those students would be considered truant. Unfortunately this is not legal action against the school, because **PARENTS WOULD BE THE ONES HELD RESPONSIBLE FOR THEIR CHILD'S TRUANCY**; it is the parents' duty to ensure that their child is in an approved program. But there is nothing to prevent a school that's operating to continue to operate, despite the Department of Education noting significant concerns that warrant shutting down the school.

In addition, if a school did not have approval, theoretically, they can shift their operations from a school type program to an educational program for **HOMESCHOOL** parents. There are some organizations that operate within a gray area; they are providing educational services to homeschool parents, but their program looks a little like a nonpublic school. This gets into some of the broader issues here in terms of operations.

Moving on to applications for **CONTINUED APPROVAL STATUS**, the list of information that we collect as a department when schools are coming up for renewal is provided. This section is new to the rules, but it has been in practice and we are codifying it here. (Similar to how we ensure that schools are registered with the Secretary of State).

N Greene encouraged Council members to read the 2nd draft of the rules that the DOE will send out after the meeting to make any individual comments, and to send that to S Meskoob.

A section under the **ALTERNATIVE METHOD** for AP status, 405.02 may not have been used in the past. But if a school wanted program approval, and they were unable to gain the approval from a DOE recognized third party organization, they can request that the Council conduct the review. The Council can decide whether it wants to keep this provision in the rules; as a group they would be reviewing a school's application materials to determine if they meet AP standards. G Powers indicated that a school couldn't bypass the process with a DOE recognize program approval agency. It would have to be a tiered process.

L Johnson noted that it's important to use consistent **TERMINOLOGY** with regard to DOE recognized **PROGRAM APPROVAL AGENCIES** so there's no question but that what we're referring to. A question she also had is whether we feel as a Council we have the expertise to evaluate a school program. Do we want that authority, upon the rejection of another agency of the school's program? It's hard to envision a circumstance of why a school would not have been approved by one of the reputable agencies that we look to.

C Whipple interjects because there are no **MONTESSORI ORGANIZATIONS** that the DOE recognizes for Montessori schools. This may be one way to gain that approval status.

The Council returned to the language used in a denied approval. The State Board of Education is either approving, conditionally approved, or denying a school. What we will use is **DENYING APPROVAL**, instead of a denied approval.

N Greene continued to emphasize that a large part of the changes made to the rules had to do with where sections were located. For example, since Annual Reports apply to both AA and AP, it did not make sense to nestle it only under the AA section. Annual Reports were pulled out and now stands alone as a separate section to which both status schools are obligated to follow.

Council members asked why the **ANNUAL REPORTS** were listed in the rules if they were already in statute. N Greene clarified that the reports are there with the specific dates they are due. Those reports are based in statute, but the dates are not. The reporting deadlines are why we have them in the rules.

G Powers returned to the question in which if there is **NEW LEGISLATION**, how do we avoid changing the rules again given that the process may take a while. Is someone going to look at this rule and think that this is all encompassing or do we have to put some language in there, stating that “**AND ALL OTHER REPORTS APPLICABLE BY STATUTE.**” N Greene indicates that more often than not, the DOE tries to incorporate new legislation requests in reporting requirements within existing data collections (which creates less of a burden on schools) unless there is an actual deadline stated in the Statute that does not align with that of one of the existing annual reports.

The next section has to do with retention of **STUDENT RECORDS**. We tried to define a little bit more of what student records look like. In the event of a school closure or termination of operations, the school shall notify the department, no less than 90 days prior to closing date and provide the records or disclose the permanent location of student records, as defined at 407. And then records shall be submitted to a third party in a format determined by the school, unless the records are being provided to the DOE, in which case those records must be submitted electronically. The DOE has spent an inordinate amount of time hunting transcripts from schools that have been closed for 10-15 years. By conducting business electronically, we have the ability to search more efficiently and effectively. In the past, if we received paper copies from nonpublic schools, we tried to digitize them. At one point the division contracted someone solely responsible for scanning transcripts because of the amount of time that it would consume.

The next section has to do with the **ESTABLISHMENT OF THE NSAC**, so this sets up the Council itself. The makeup and its assigned areas of responsibility. We reviewed this section in depth at the last meeting. Those changes were noted. In terms of **MEMBERSHIP SELECTION** we have reduced the membership; a group of 21 was difficult to assemble, so we've dropped it from 21 to 16. We wanted to maintain as much representation of the nonpublic schools. That's 11. We changed the department membership from four to two. (Hannah from the Bureau of Student Services is interested in sitting in meetings). We dropped representative from DHHS from three to one because it has been really difficult to get a recommendation from the Commissioner of DHHS. Having a member from DCYF was valuable. The public school administrator position is now open; we are looking.

Members of third party agencies such as **AISNE**, (Eliza Alexander) who are part of the Council, have been valuable and broaden the perspective of the NSAC's membership. We should have a position for that. G Powers and L Johnson hold the interested citizen spots. E Alexander shares her appreciation to sit on the council, albeit as a nonvoting member. She represents her organization which operates throughout New England. To understand the conversations that are happening is very useful.

N Greene indicates that if we want to try to open up some of those categories that outline membership, we can. L Johnson opined that opening a category for members of other agencies and organizations that assist in nonpublic schools and their operations would be useful.

N Greene turned to the **TERM OF APPOINTMENTS**, which will be three year terms. It might seem that at this point, since everybody has been appointed at the same time, everyone's term will end at the same time. But what tends to happen given the Council of this size, you see natural attrition as people sort of drop

off from year to year. We can also look at particular rotations of seats, or how many seats are appointed within any given year.

L Johnson noted that having members on the Council for an extended time is helpful because they offer a lot of historical knowledge. For the first rotation maybe we consider rotating half or less than half out, so we have some old and some new?

(N Greene reminded members that once the Council has completed discussion on the rules there will be public hearings, and there may be some additional things that come up as well, through that part of this process.)

L Johnson noted that if a council member would like to resign, they should be asked to provide at least a 90 day notice. D Thibault suggested that a statement be added indicate that council members can renew their term.

N Greene may consult the DOE attorney, Chris Bond to help with some language related to term renewals and other aspects discussed because he is familiar with many State Agency Boards. The position of **CHAIRMAN OF THE COUNCIL**, for example, could use clarity in terms of appointment and term. We got lucky with D Thibault who we encouraged to run. But there isn't anything in the rules right now in terms of the appointment.

The rest of the rules is related to **GRIEVANCE AND THE COMMITTEE**. N Greene may review this section with Chris Bond as well as comparative to other processes and procedures that are in place within the department.

L Johnson pointed out the differences between **Ed 408 AND Ed 409**, both related to grievances, and how the relation between one section to another is ambiguous. It should also be clarified that 409 has strictly to do with school safety and violence concerns versus 408 on program approvals. The titles need to be clear. As mentioned in the past, invoking due process procedures is also problematic for a nonpublic school setting.

L Johnson examined what the **STATUTE SAYS ON GRIEVANCES** for nonpublic schools. It says we have two primary roles, one is approval status regarding attendance or attendance and program. And the other one says we are charged with establishing a process for receiving, investigating, and resolving complaints from parents and legal guardians in terms of school safety and school violence in nonpublic schools.

N Greene and L Johnson noted that the grievance goes right into the State Board that is charged with enacting the rules and holding the grievances regarding school safety, not the NSAC. The responsible party for handling grievances and the different stages needs to be clarified.

N Greene noted and further clarified that the **GRIEVANCES** that are indicated in **Ed 408** are all relative to nonpublic schools that are going through the application process. And then **Ed 409** is relative to parents and students who have grievances against the nonpublic school who don't feel like they're able to come to a resolution with the nonpublic school under their Governing Board/existing processes. That's when the DOE policies and due process hearings kick in. The term grievance is being used in two very different ways here, as a result, and needs clarification.

L Johnson identified four additional items for clarification. One, as mentioned in the last meeting, we need to **BETTER DEFINE A NONPUBLIC SCHOOL** to say that it includes a private school and an independent school. We should avoid using the term private school because it is not all inclusive. In section 401, a reference is made to “an approved private school” and that should be changed to an approved nonpublic school to maintain consistency and based on the comment just made.

Next, the use of 10 calendar days or **10 BUSINESS DAYS** needs to be made. (S Meskoob note: RSAs reference business days, so our rules are required to stay consistent).

Section 401.02(p), 3 should reference the paragraph before since it is related, Section 401.02(o), relative to the role of a grievance committee.

Lastly, in the section on **FEDERAL PROGRAMS**, it should be clarified that nonpublic schools are eligible subject to the terms of those programs or pursuant to the terms of those programs. We don't want to indicate that nonpublic schools can participate if in fact they don't qualify.

N Greene indicated that the next step is composing the 2nd draft. It will be sent to members. If there are additional comments or feedback, please send it back to us individually. In three to four weeks, the DOE will give a heads up to the State Board that we're getting closer to having a revised draft of the rules for them.

D Thibault sets a tentative date for the next meeting: June 21, 2021. Minutes from meeting on 3.22.2021 were passed.

DRAFT